SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 265.

GEORGE FOUNIS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED FEBRUARY 1, 1908.

(16,483.)

(16,483.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 298.

GEORGE POUNDS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

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1 UNITED STATES OF AMERICA,
Northern District of Alabama.

September Term, 1895.

Pleas had at a regular term of the district court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-room, in the city of Birmingham, in said division of said district, the first Monday of September, it being the second day thereof, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States of America the one hundred and twentieth year.

No judge being present, the court was opened by the marshal according to law.

Present: V. Lee Cowart, assistant U. S. attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

The following order, being received from the judge, was duly read in open court, to wit:

"Judges' Chambers, United States District Court, Middle District of Alabama.

IN CHAMBERS, MONTGOMERY, ALA., *July 16th*, 1895.

John Bruce, judge.

Ordered, that the circuit and district courts of the United States for the southern division of the northern district of Alabama be, and the same are hereby, adjourned from Monday, the 2nd day of September, 1895, to Monday, the 16th day of September, 1895, and parties, witnesses, and jurors need not appear in said courts before that date, September 16th, 1895.

(S'g'd) JOHN BRUCE, *Judge.*

Filed September 2nd, 1895.

(S'g'd) N. W. TRIMBLE, *Clerk.*

2 Thereupon court was adjourned until Monday, September 16th, 1895, at 12 m.

MONDAY MORNING, *September 16th*, 1895.

Court met pursuant to adjournment.

Present: The Hon. John Bruce, district judge, presiding; Emmet O'Neal, U. S. district attorney: J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

The grand jury as organized, sworn, and charged is as follows, to wit: Chambers M. McAdory, foreman; Fletcher W. Box, T. K. Wright, Reuben Lewis, John H. Keith, Isaac Wharton, J. W. Crowder, Chas. Stollenwerck, A. B. Hamlett, J. B. Graham, R. B. Posey, A. W. Latham, G. C. Gowdy, Jefferies Beount, Wm. A. Harvey, J. R. Miller, John F. Gardner.

THURSDAY MORNING, *September 26th*, 1895.

Court met pursuant to adjournment.

Present: Hon. John Bruce, district judge, presiding; Lee Cowart, assistant U. S. attorney; J. C. Musgrove, U. S. marshal, by J. McKee Gould, deputy, and N. W. Trimble, clerk.

Order for Clerk to File and Enter Indictments.

It was ordered by the court that the clerk file and enter upon the dockets of the court the indictments this day presented, and, in obedience to the order of the court, the said indictments were
3 entered as follows:

UNITED STATES
vs.
GEORGE POUNDS. } No. 870. Illicit Distilling.

4 *Indictment.*

UNITED STATES OF AMERICA:

In the District Court of the United States for the Southern Division of the Northern District of Alabama, September Term, 1895.

The grand jurors of the United States, elected, empaneled, sworn and charged to enquire for the body of the southern division of the northern district of Alabama upon their oaths present: that on the 1st day of July A. D. 1895, in the said southern division of the northern district before the finding of this indictment, and within the jurisdiction of said court, in the county of Cleburne George Pounds did unlawfully have in his possession and custody, and under his control, a still and distilling apparatus set up without having the same registered as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did carry on the business of a distiller without having given bond as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. And the grand jurors aforesaid, upon their oaths *af* aforesaid, do further present that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did engage in and carry on the business of a distiller, with intent to defraud the United States of the tax on the spirits distilled by him, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

5 The grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds who was engaged in carrying on the business of a distiller, defrauded, or attempted to

defraud, the United States of the tax on the spirits distilled by him, or of a part thereof, contrary to the form of the statute in such case made and provived, and against the peace and dignity of the United States.

The grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid the said George Pounds unlawfully did remove and aid and abet in the removal of distilled spirits on which the tax had not been paid, to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

The grand jurors aforesaid upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did remove and aid and abet in the removal of distilled spirits from a ware-
6 house for distilled spirits authorized by law, in a manner other than provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

The grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits, which had been removed from a warehouse for distilled spirits authorized by law, in a manner other than is provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did work in a distillery upon which no sign bearing the words "registered distillery" was placed and kept as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully and knowingly did carry and convey to wit: ten gallons or distilled spirits from a distillery on which no sign bearing the words of a "registered distillery" was placed and kept as required by law, contrary to the form of the statute in such case made and provided, and against the peace and diginity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do

further present, that at the time and place and within the
7 jurisdiction aforesaid, the said George Pounds unlawfully and knowingly did carry and deliver grain, molasses and other raw material to a distillery on which no sign bearing the words "registered distillery" was placed and kept as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did make or ferment mash, wort or wash fit for distillation or for the production of spirits, or alcohol, in a building or on premises other than a distillery duly authorized according to law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds not being an authorized distiller, did by distillation or other process separate the alcoholic spirits from fermented mash, wort or wash, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place and within the jurisdiction aforesaid, the said George Pounds without rectifying purifying and refining distilled spirits, did by mixing such spirits, wine, or other liquor with other material, manufacture a spurious imitation or compound liquor for sale under the name of whisky, brandy, gin, rum, wine, spirits, cordials, or wine spirits, or some other name to the grand jury unknown, without having first paid the
8 special tax as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present, that at the time and place aforesaid, and within the jurisdiction aforesaid, the said George Pounds unlawfully did carry on the business of a retail liquor dealer without having first paid the special tax as required by law, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States.

EMMET O'NEAL,
United States Attorney.

9 (Endorsed:) Witnesses: J. F. Creen, J. W. Barker, J. A. Barker, S. C. Zaner. We, the jury, find the defendant guilty as charged in the 6th count of the indictment. John R. Rockett, foreman.

10 Further endorsed: In the U. S. district court. No. 870. United States *vs.* George Pounds. Sec. 3258. Violating revenue laws. A true bill. Chambers McAdory, foreman of grand jury. Filed in open court this 26th day of September, 1895. N. W. Trimble, clerk.

11 THURSDAY MORNING, *March 12th*, 1896.

Court met pursuant to adjournment.

Present: The Hon. John Bruce, judge, presiding; Emmet O'Neal, United States attorney; Lee Cowart, assistant district attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

UNITED STATES
vs.
GEORGE POUNDS. } 870. Illicit Distilling.

For good cause shown to the court, it is ordered that this cause be, and the same is hereby, reset for Monday next, March 16th.

12 WEDNESDAY MORNING, *March 18th*, 1896.

Court met pursuant to adjournment.

Present: The Hon. John Bruce, district judge, presiding; Emmet O'Neal, Esqr., V. Lee Cowart, assistant U. S. attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

UNITED STATES
vs.
GEORGE POUNDS. } No. 870. Illicit Distilling.

Upon motion of defendant, it is ordered by the court that this cause be, and the same is hereby, continued until the next term of court.

13 UNITED STATES OF AMERICA:

Northern District of Alabama, Southern Division, September Term, 1896.

Pleas had at a regular term of the district court of the United States for the southern division of the northern district of Alabama, begun and held at the United States court-room, in the city of Birmingham, in said division of the said district, the first Monday of September, it being the seventh day thereof, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twenty-first year.

Present: Hon. Emmet O'Neal, U. S. attorney; Lee Cowart, Esqr., assistant U. S. att'y; J. C. Musgrove, U. S. marshal, by his deputy, Robert Barber; N. W. Trimble, clerk, and E. T. Broadway, chief deputy clerk.

After the court had been regularly opened by Robert Barber, deputy marshal, the following order, which had been received from the district judge, Hon. John Bruce, was read and filed in open court, to wit:

Ordered that the circuit and district courts of the United States for the southern division of the northern district of Alabama be,

and the same are hereby, adjourned from the first Monday of September, 1896, to the Monday, November 23, 1896.

July 13th, 1896.

(S'g'd) JOHN BRUCE, *Judge.*

Endorsed: Filed in open court this the 7th day of September, 1896. N. W. Trimble, clerk.

Thereupon court adjourned until Monday, the 23 day of November, 1896, at 12 m.

14 SATURDAY MORNING, *November 28th*, 1896.

Court met pursuant to adjournment.

Present: The Hon. Aleck Boarman, judge of the district courts of the United States for the western district of Louisiana, sitting and presiding under the order of designation and appointment by the circuit judge; Emmet O'Neal, Esqr., U. S. attorney; V. Lee Cowart, assistant U. S. attorney; J. C. Musgrove, U. S. marshal, and N. W. Trimble, clerk.

UNITED STATES *vs.* GEORGE POUNDS. } No. 870. Illicit Distilling.

Comes the United States, by district attorney, and also comes the defendant, by his attorneys and in his own proper person, and after being duly arraigned upon the indictment filed herein against him, and after having heard the same read over to him pleads not guilty.

Thereupon, to try the issues joined, comes a jury of good and lawful men, to wit, John R. Rockett and eleven others, who were duly elected, tried, and sworn upon their oaths to try the issues herein joined, and a true verdict to render according to the evidence and the law as it may be given to them by the court.

UNITED STATES *vs.* GEORGE POUNDS. } No. 870. Illicit Distilling.

In this cause, the jury being about to retire and it being now a late hour at night, it is agreed to by counsel for both parties, in open court and in the presence of the defendant, that the jury trying this cause may, through their foreman, write their ver-
15 dict upon the back of the indictment filed herein, put the same into an envelope, and after sealing the same to address and deliver it to the clerk of the court to be opened Monday morning in open court, and it is hereby so ordered.

UNITED STATES *vs.* GEORGE POUNDS. } No. 870. Illicit Distilling.

Ordered by the court that the marshal do furnish supper to the jury trying this cause, and that the expense therefor be paid by the

said marshal out of any funds available in his hands for that purpose.

Ordered by the court that this court do remain in recess until the rendition of a sealed verdict in the case No. 870, of The United States *vs.* George Pounds, as heretofore directed.

UNITED STATES
vs.
GEORGE POUNDS. } No. 870. Illicit Distilling.

Ordered by the court that the defendant herein be taken into custody by the m-rshal and committed to await the rendition and opening of the sealed verdict as heretofore directed.

UNITED STATES
vs.
GEORGE POUNDS. } No. 870. Illicit Distilling.

Comes the jury in this cause and renders a sealed verdict in this cause in a manner as directed by an order of the court heretofore made in said cause.

16 MONDAY MORNING, *November 30th*, 1896.

UNITED STATES
vs.
GEORGE POUNDS. } No. 870. Illicit Distilling.

The jury trying this cause having rendered a sealed verdict in the cause as directed by a former order of court made herein, and the defendant being present in open court, it is ordered that the said verdict be opened and published, which is accordingly done in the presence of said defendant and the jury trying said cause. The same reads as follows, to wit:

"We, the jury, find the defendant guilty as charged in the 6th count of the indictment.

JOHN R. ROCKETT, *Foreman.*"

UNITED STATES
vs.
GEORGE POUNDS. } 870. Illicit Distilling.

Ordered by the court that the defendant herein be remanded to the custody of the marshal and committed to await the judgment and sentence of the court to be pronounced upon him.

17 *Motion in Arrest of Judgment.*

UNITED STATES
vs.
GEORGE POUNDS. }

Now comes the defendant after the rendition of the verdict of the jury finding him guilty as charged in the 6th count of the indict-

ment and before judgment and sentence, and moves the court to arrest the judgment in this case, upon the ground that the said sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant.

W. H. SMITH,
Attorney for Defendants.

18 Endorsed: No. 870. United States *vs.* George Pounds. Motion in arrest of judgment. Filed December 14, 1896. N. W. Trimble, clerk.

19 *Amendment to Motion in Arrest of Judgment.*

UNITED STATES
vs.
GEORGE POUNDS.

By leave of the court first had and obtained the defendant amends his motion in arrest of judgment by adding the following grounds:

1st. The said 6th count of the indictment fails to show that there was a warehouse provided by law to which the spirits alleged to have been concealed should have been removed.

2nd. That the jury separated before the verdict of the jury was returned into court.

W. H. SMITH,
Attorney for Defendant.

20 Endorsed: No. 870. United States *vs.* George Pounds. Amendment to motion in arrest of judgment. Filed December 16th, 1896. N. W. Trimble, clerk.

21 *Submission of Motion in Arrest of Judgment.*

MONDAY MORNING, *December 14th*, 1896.

Court met pursuant to adjournment.

Present: The Hon. Aleck Boarman, judge of the district court of the United States for the western district of Louisiana, sitting and presiding under the order of designation and appointment by the circuit judge; Hon. Emmet O'Neal, U. S. attorney; V. Lee Cowart, Esqr., assistant U. S. attorney; J. C. Musgrove, Esqr., U. S. marshal, by his chief office deputy, J. McKee Gould, and N. W. Trimble, clerk.

UNITED STATES
vs.
GEORGE POUNDS. } No. 870. Illicit Distilling.

This cause coming on to be heard upon the defendant's motion in arrest of judgment, and after being argued by counsel *pro* and *con.*, was submitted to the court for its consideration.

Order Overruling Motion in Arrest of Judgment.

SATURDAY MORNING, *December 19th*, 1896.

In this cause, the motion of the defendant, as amended, in arrest of judgment having heretofore been argued and submitted, it is now, after due consideration thereof, ordered by the court that the said motion be, and the same is hereby, overruled.

22 *Sentence and Judgment.*

SATURDAY MORNING, *December 19th*, 1896.

UNITED STATES *vs.* GEORGE POUNDS. } No. 870. Illicit Distilling.

The defendant herein having on a former day of this court been convicted, and he being now present in open court, and upon being asked by the court if he has anything to say why the judgment and sentence of the court should not be pronounced upon him says nothing, it is therefore ordered by the court that the said defendant, George Pounds, be imprisoned in the common jail of Jefferson county for the period of six months, to be computed and commenced from November 30th, 1896, and that he pay a fine of one hundred dollars and the costs of this prosecution, for which execution may issue.

UNITED STATES *vs.* GEORGE POUNDS. } 870. Illicit Distilling.

Upon motion of the defendant's attorney, it is ordered by the court that the supersedeas bond in this cause be, and the same is hereby, fixed in the amount of $2,000.00, two thousand dollars.

23 *Defendant's Bill of Exceptions.*

Be it remembered that the cause of The United States *vs.* George Pounds coming on to be heard in the district court of the United States for the southern division of the northern district of Alabama, Hon. Aleck Boarman, district judge, present and presiding, the following proceedings, among other things, not otherwise appearing of record, were had, to wit:

After the rendition of the verdict of guilty, as shown by the record, and before the judgment and sentence, the defendant moved the court in arrest of judgment upon the grounds set out in the motion filed December 14th, 1896, and the amendment thereto filed December 16th, 1896; which motion and amendment are hereby referred to and made a part of this bill of exceptions.

Upon the hearing of said motion, which was prior to the judgment and sentence, the court overruled the said motion as amended,

and the defendant then and there duly excepted to such ruling and action of the court in overruling said motion.

Signed and seal- this 23 day of December in open court and made a part of the record in said cause.

ALECK BOARMAN, *Judge.*

24 Endorsed: No. 870. United States *vs.* George Pounds. Defendant's bill of exceptions. Filed December 23rd, 1896. N. W. Trimble, clerk.

25 *Petition for Writ of Error and Assignment of Error.*

To the Hon. Aleck Boarman, judge:

Your petitioner, George Pounds, respectfully shows that he was convicted at the present term of the court of concealing spirits which had been removed to a place other than the warehouse provided by law, and that he has an exception reserved to the ruling of the court upon motion in arrest of judgment. Wherefore he prays that a writ of error be allowed him, transferring the cause to the Supreme Court of the United States, that the said Supreme Court may review the action of this court, and petitioner assigns as error the ruling of the court in overruling petitioner's motion in arrest of judgment.

GEORGE POUNDS.
W. H. SMITH, *Attorney.*

Allowed.

26 Endorsed: No. 870. The United States *vs.* George Pounds. Petition for writ of error and assignment of error. Filed in open court this the 23rd day of December, 1896. N. W. Trimble, clerk.

27 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States to the honorable the judge of the district court of the United States for the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you or some of you, between The United States of America and George Pounds, a manifest error hath happened, to the great damage of the said George Pounds, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., on the 3rd Monday of January, 1897, in the said Supreme Court of the United States, to

be then and there held, *and*, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States *d*hould be done.

28 Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court, the 23rd day of December, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] N. W. TRIMBLE,
Clerk of the U. S. Circuit Court, Nor. District of Ala., Sou. Div.

Allowed by—
ALECK BOARMAN, *Judge.*

A true copy.
[SEAL.] N. W. TRIMBLE, *Clerk.*

29 Endorsed: No. 870. Writ of error. Filed December 23, 1896. N. W. Trimble, clerk.

30 UNITED STATES OF AMERICA:

The President of the United States, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., on the 3rd Monday of January, 1897, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the southern division of the northern district of Alabama, wherein George Pounds is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done *in* the parties in that behalf.

Witness the Honorable Aleck Boarman, presiding as judge of the district court of the United States for northern dist. of Alabama, this 23 day of December, in the year of our Lord one thousand eight hundred and ninety-six.

ALECK BOARMAN, *Judge.*

31 Endorsed: I hereby accept service of the within citation and copy thereof this day received. December 31, 1896. Emmet O'Neal, U. S. attorney, by Lee Cowart, ass't dist. attorney.

32 Further endorsed: No. 870. Citation. Filed December 31, 1896. N. W. Trimble, clerk.

33 *Bail Bond on Writ of Error.*

U. S. District Court, Northern District Alabama, Southern Division.

Know all men by these presents that we, George H. Pounds, as principal, and A. A. Pounds and J. W. A. Deese, A. M. Turner,

T. M. Deese, and J. I. Burgess, as sureties, are held and firmly bound unto the United States of America for the sum of two thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 28th day of December, in the year one thousand eight hundred and ninety-six.

The condition of this obligation is such that whereas, on the 19th day of December, anno Domini 1896, by the consideration of the district court of the said United States for the northern district of Alabama, southern division, in a certain criminal cause, to wit, a certain indictment against the above-named George H. Pounds for concealing spirits for which the tax had not been paid, removed to a place other than the distillery warehouse provided by law, being criminal cause number 870 in the court, the said George Pounds was tried by jury and found guilty of the offense charged in said indictment in said cause, and was thereupon adjudged and sentenced to imprisonment for a term of six months in jail, in the State of Alabama;

And whereas, upon petition of the said George H. Pounds, the Hon. Aleck Boarman, district judge of the said United States, who held said term of said court at which such conviction was had in the northern district of Alabama, at Birmingham, within his district, has allowed a writ of error from the Supreme Court of the United States to the said district court upon the judgment and sentence aforesaid, and has ordered that such writ of error operate as *to* stay to proceedings under the said judgment and sentence; and whereas the said George H. Pounds has sued out such writ of error, and which has been issued accordingly, and upon which a citation has been issued and served upon the United States, and the said George H. Pounds has, by order of the Honorable Aleck Boarman, who held said term of the said district court, been admitted to bail pending said writ of error in the sum of $2,000:

Now, if the said George H. Pounds shall be and personally appear before the said district court on the first day of the next regular term thereof, to be held at the United States court-house, at Birmingham, in said southern division of the said district, on the first Monday of March next, and from day to day thereafter during that and subsequent terms until the determination of the said writ of error, and shall not, at any of the terms of said district court, depart the court without leave thereof (shall prosecute his writ of error with effect and without delay), and shall, in case the judgment and sentence aforesaid is affirmed, surrender himself to the custody of the marshal of the said United States for the northern district of Alabama aforesaid, and abide by the judgment and orders of the court, and, if the said Supreme Court of the United States shall reverse the judgment and sentence of the said district court, he shall appear in

said district court until discharged by law, then this obligation shall be void; otherwise remain in full force and effect.

A. A. POUNDS. [L. S.]
J. W. A. DEESE. "
A. M. TURNER. "
T. M. DEESE. "
J. I. BURGESS. "

35 I, J. W. A. Deese, as surety on the annexed bond, being duly sworn, *dep* depose and say that I am worth in real estate in the northern district of Alabama the amount of one thousand dollars over and above all just debts and liabilities and legal exceptions under the constitution and laws of the State of Alabama.

I further state that I am not indemnified from liability by the accused or by any one else to sign this bond, but I sign the same without indemnity or collateral security of any kind or character.

J. W. A. DEESE.

Subscribed and sworn to before me this 28th day of December, 1896.

C. M. COGGIN,
Notary Public. [SEAL.]

[SEAL.]

I, A. M. Turner, a surety on the annexed bond, being duly sworn, *depe* depose and say that I am worth in real estate in the northern district of Alabama the amount of five hundred dollars over and above all just debts and liabilities and legal exceptions under the constitution and laws of the State of Alabama.

I further state that I am not indemnified from liability by the accused or by any one else to sign this bond, but I sign the same without indemnity or collateral security of any kind or character.

A. M. TURNER.

Subscribed and sworn to before me this 28th day of December, 1896.

[SEAL.]

C. M. COGGIN,
Notary Public.

36 I, A. A. Pounds, a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate in the northern district of Alabama the amount of two thousand dollars over and above all just debts and liabilities and legal exceptions *und* under the constitution and laws of the State of Alabama.

I further state that I am not indemnified from liability by the accused or by any one else to sign this bond, but I sign the same without indemnity or collateral security of any kind or character.

A. A. POUNDS.

Subscribed and sworn to before me this 28th day of December, 1896.

[SEAL.]

C. M. COGGIN,
Notary Public.

I, J. I. Burgess, a surety on the annexed bond, being duly sworn, depose and say that I am worth in real estate in the northern district of Alabama the amount of two thousand dollars over and above all my just debts and liabilities and legal exceptions under the constitution and laws of the State of Alabama.

I further state that I am not indemnified from liability by the accused or by any one else to sign this bond, but I sign the same without indemnity or collateral security of any kind or character.

J. I. BURGESS.

Subscribed and sworn to before me this 28th day of December, 1896.

[SEAL.]

C. M. COGGIN,
Notary Public.

Approved December 30th, 1896.

ALECK BOARMAN, *Judge.*

37 Endorsed: No. 870. The United States *vs.* George Pounds. Bail bond pending writ of error. Filed 31 day of December, 1896. N. W. Trimble, clerk.

38 I, N. W. Trimble, clerk of the district court of the United States for the southern division of the northern district of Alabama, hereby certify the foregoing pages, numbered 1 to 37, inclusive, to be a full, true, complete, and correct transcript of the record and proceedings in the case of The United States *versus* George Pounds, lately pending and determined in the said district court, as the same now appears of record and on file in my office.

In witness whereof I hereunto subscribe my name and cause the seal of the said district court to be affixed this the 16th day of January, A. D. 1897.

[Seal District Court U. S., N. D. of Ala., Sou. Div.]

N. W. TRIMBLE,
Clerk U. S. District Court, Nor. Dist. of Ala., Sou. Div.

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the northern district of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you or some of you, between The United States of America and George Pounds, a manifest error hath happened, to the great damage of the

said George Pounds, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 3d Monday of January, 1897, in the said Supreme Court of the United States to be then and there held, *and*, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal Circuit Court U. S., N. D. of Ala., Sou. Div.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 23rd day of December, in the year of our Lord one thousand eight hundred and ninety-six.

N. W. TRIMBLE,
Clerk of the U. S. Circuit Court, Nor. Dist. of Alabama, Southern Division.

Allowed by—
ALECK BOARMAN, *Judge.*

[Endorsed:] Geo. Pounds, pl'ff in error, *vs.* The United States, d'f't in error. Writ of error.

40 UNITED STATES OF AMERICA, *ss:*

The President of the United States to The United States of America, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., on the 3d Monday of January, 1897, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the southern division of the northern district of Alabama, wherein George Pounds is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Aleck Boarman, presiding as judge of the district court of the United States for the northern district of Alabama, this 23rd day of December, in the year of our Lord one thousand eight hundred and ninety-six.

ALECK BOARMAN, *Judge.*

41 [Endorsed:] Geo. Pounds, pl'ff in error, *vs.* The United States, d'f't in error. Citation. Filed Dec'r 31, 1896. N. W. Trimble, clerk.

I hereby accept service of the within citation, & copy thereof this day received.
December 31, 1896.

EMMET O'NEAL,
U. S. Attorney,
By LEE COWART,
Ass't U. S. Attorney.

42 [Endorsed:] No. —. U. S. Supreme Court. George Pounds, pl'ff in error, *vs.* The United States, d'f't in error.

Endorsed on cover: Case No. 16,483. N. Alabama D. C. U. S. Term No., 298. George Pounds, plaintiff in error, *vs.* The United States. Filed February 1, 1897.

No. 298.

Brief of Smith for P. E.

Roberts, Printer, B'ham.

SEP 20 1897
JAMES H. McKENNEY,
CLERK

Filed Sept. 20, 1897.

In the United States Supreme Court

No. 298—October Term, 1897.

GEORGE POUNDS, Plaintiff in Error,

vs.

THE UNITED STATES.

BRIEF OF J. A. W. SMITH, ATTORNEY FOR PLAINTIFF IN ERROR.

THE FACTS.

The indictment under which the defendant (plaintiff in error) was convicted contains fifteen counts. (Record, pp. 2-4.) He is charged with running an illicit distillery, and each count of the indictment, no doubt, intended to charge some offense growing out of, or connected with, such a distillery. The fact is not shown by the record in this case, but I do not deem it improper to state here, that the evidence showed that the distillery which the defendant was charged to have been connected with was an illicit one—a "wild cat" still, pure and simple.

The jury returned a verdict of guilty under the *sixth* count

of the indictment, and defendant was sentenced to six months' imprisonment and fined one hundred dollars.

That count reads as follows:

> The grand jurors aforesaid, upon their oaths aforesaid, do further present, that, at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States. (Record, p. 3.)

The charge was intended to cover a case arising under section 3296 of the Revised Statutes.

After verdict, the defendant moved the court, in arrest of judgment, upon the following grounds, to-wit:

"That the said sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant" (record, pp. 7-8), and upon the further grounds, added by amendment (record, p. 8): 1. "The said sixth count of the indictment fails to show that there was a warehouse provided by law to which the spirits alleged to have been concealed should have been removed." 2. "That the jury separated before the verdict of the jury was returned into court."

The overruling of this motion (record p. 9) is assigned as error, record p. 10. The bill of exceptions (pp. 9 and 10 of record) also shows the motion overruled and the exception.

BRIEF.

1. It seems clear that section 3296 of the Revised Statutes intended to provide a punishment for a distiller who had complied with the various provisions of chapter four of the Revised Statutes, and had provided a warehouse as required by section 3271, and then concealed or aided in the concealment of distilled spirits which had been removed, the tax not having been paid, to a place other than the distillery warehouse so provided. No warehouse is provided for the storage of *illicit* spirits to be kept until the tax is paid; in fact there is no tax due on such spirits. Section 3296 was intended to punish offenses growing out of misconduct in connection with *legally* distilled spirits. Section 3289 provides the penalty for concealing *illicit* spirits.

The indictment does not inform the defendant that a warehouse was provided in which the spirits he is alleged to have concealed should have been stored until the tax was paid. It does not allege that any tax was due. It is too uncertain to sustain the judgment.

Pettibone vs. United States, 148 U. S. 197.
United States vs. Hess, 124 U. S. 483.

An omission of matters of substance in an indictment is not aided or cured by verdict.

United States vs. Hess, 124 U. S. 483.

2. The judgment should have been arrested because the jury made their verdict, sealed it and handed it to the clerk on Saturday and it was not opened by him until Monday. (Record pp. 6 and 7.) From the orders of the court it is fair to presume that the jury separated before the verdict was read. It was not

within the power of the defendant or his counsel to waive his right to have the jury kept together until they returned their verdict.

Lewis vs. United States, 146 U. S. 370.

Separation is not allowed, in any case, after the jury retire to find their verdict, until it is found and delivered in open court.

12 Am. and Eng. Encyclopedia of Law, p. 375.

J. A. W. SMITH,

Attorney for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

GEORGE POUNDS, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 298.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The plaintiff in error was convicted on the sixth count of the indictment, which reads as follows (Rec., p. 3):

> The grand jurors aforesaid, upon their oaths aforesaid, do further present that at the time and place and within the jurisdiction aforesaid the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed

> to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

The indictment charges the date of the offense on the 1st day of July, A. D. 1895, in the southern division of the northern district of Alabama, and within the jurisdiction of said court, in the county of Cleburne.

This count in the indictment is drawn under section 3296 of the Revised Statutes, which reads as follows:

> Whenever any person removes, or aids or abets in the removal of any distilled spirits on which the tax has not been paid, to a place other than the distillery warehouse provided by law, or conceals, or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of any distilled spirits from any distillery warehouse or other warehouse for distilled spirits authorized by law, in any manner other than is provided by law, or conceals, or aids in the concealment of any spirits so removed, he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than two hundred nor more than five thousand dollars, and imprisoned not less than three months nor more than three years.

The judgment of the court was that the plaintiff in error, "George Pounds, be imprisoned in the common jail of Jefferson County for the period of six months, to be computed and commence from November 30th, 1896, and that he pay a fine of one hundred dollars and the costs of this prosecution, for which execution may issue." (Rec., p. 9.)

After the verdict, and before the judgment, the plaintiff in error filed his motion in arrest of judgment as follows (Rec., pp. 7, 8):

> Now comes the defendant after the rendition of the verdict of the jury finding him guilty as charged in the 6th count of the indictment and before judgment and sentence, and moves the court to arrest the judgment in this case, upon the ground that the sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant.

Afterwards an amended motion in arrest of judgment was filed, as follows (Rec., p. 8):

> By leave of the court first had and obtained the defendant amends his motion in arrest of judgment by adding the following grounds:
>
> First. The said sixth count of the indictment fails to show that there was a warehouse provided by law to which the spirits alleged to have been concealed should have been removed.
>
> Second. That the jury separated before the verdict of the jury was returned into court.

POINTS AND ARGUMENT.

It is not deemed necessary to detain the court for a consideration of the grounds set forth in the amended motion. There is nothing in the record to show that the jury separated before the verdict was returned into court, but the record does show that a sealed verdict was returned by the jury by agreement of counsel for both parties in open court and in the presence of the defendant.

As to the first ground in the amended motion, the charge is that the spirits concealed were spirits which had been

removed to a place other than the distillery warehouse provided by law. It was not necessary to either allege or prove under this charge that there was a distillery warehouse to which the spirits ought to have been removed. The gist of this offense is the removal of untax-paid spirits in a manner otherwise than is required by the provisions of the internal-revenue laws. These laws require distilled spirits from the stills to be run into what are called cistern rooms, which are under the custody of the storekeeper and gauger assigned to the distillery, and which are secured by a lock to which he has the key. The spirits, when produced and run into the cistern room, are required to be taken, under the supervision of the storekeeper and gauger, and deposited in the distillery warehouse provided by law, and there gauged and marked by him and reported upon a prescribed form to the collector. Upon proper withdrawal papers sent up by the distiller, stamps are issued, to be affixed to the packages to denote the payment of the stamp tax on the spirits, and after the affixing of such stamps the spirits can be removed from the warehouse by the distiller. Now, it is to prevent a violation of this law that it was made an indictable offense to remove spirits upon which the tax had not been paid to a place other than a distillery warehouse provided by law, and it was also denounced as a crime to conceal, or to aid in the concealment of, spirits on which the tax had not been paid, which said spirits had been removed to a place other than a distillery warehouse provided by law.

The removal of distilled spirits on which the tax has not been paid to any place other than a distillery ware-

house provided by law is unlawful, and to conceal or aid in the concealment of distilled spirits so removed is also unlawful. So the omission to set forth in the indictment that there was a warehouse provided by law, to which the spirits alleged to have been concealed should have been removed, does not constitute a defect. The law requires that there should be a warehouse, and no distillery can be legally operated without a warehouse. When a distillery is shown to be in existence, the law presumes that it is complete, as required by the statutes.

This leaves the case, then, to be considered upon the question raised in the motion in arrest of judgment, viz, "that the sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant."

The attorney for the plaintiff in error, in setting forth his grounds in arrest of judgment, did not enlighten the court as to wherein the vagueness and uncertainty existed. The only possible objection which could be urged to the count upon which the plaintiff in error was convicted is the fact that it charges that he did unlawfully conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed to a place other than the distillery warehouse provided by law.

Now it is true that it would have been better form to have charged the concealment in one count, and aiding in the concealment in another, but the joinder of the two charges in one count is not repugnant, and does not come within the rule that a count in an indictment which charges two distinct, independent offenses is bad.

Although these two offenses appear by the use of the disjunctive in the statute, they are in fact but one offense, and may be stated conjunctively in one count.

Where a person is charged with doing a thing which constitutes an offense, and causing it to be done, it is sufficient to charge both in one count, it being held that it is the same thing in law to cause a thing to be done as to do it.

Bishop's New Crim. Proc., Vol. 1, sec. 434, p. 268; *United States* v. *Nunnemacher*, 7 Bissell, 129; see also *United States* v. *Blaisdell*, 9 Int. Rev. Rec., 82.

JAS. E. BOYD,
Assistant Attorney-General.

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POUNDS v. UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

No. 298. Submitted May 6, 1898. — Decided May 23, 1898.

An indictment under Rev. Stat. § 3296, for the concealment of distilled spirits on which the tax has not been paid, removed to a place other than the distillery warehouse provided by law, which charges the performance of that act at a particular time and place, and in the language of the statute, is sufficiently certain.

When there is nothing in the record to show that the jury in a criminal case separated before the verdict was returned into court, and the record shows that a sealed verdict was returned by the jury by agreement of counsel for both parties in open court, and in the presence of the defendant, the verdict was rightly received and recorded.

THE indictment under which the defendant (plaintiff in error) was tried contained fifteen counts. He was convicted on the sixth count, which read as follows:

"The grand jurors aforesaid, upon their oaths aforesaid, do further present, that, at the time and place and within the jurisdiction aforesaid, the said George Pounds unlawfully did conceal and aid in the concealment of distilled spirits on which the tax had not been paid, which said spirits had been removed to a place other than the distillery warehouse provided by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States."

The count was drawn under section 3296 of the Revised Statutes, which provides that —

"Whenever any person removes, or aids or abets in the removal of any distilled spirits on which the tax has not been paid, to a place other than the distillery warehouse provided by law, or conceals, or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of any distilled spirits from any distillery warehouse or other warehouse for distilled spirits authorized by law, in any manner other than is provided by law, or conceals, or aids

in the concealment of any spirits so removed, he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than two hundred nor more than five thousand dollars, and imprisoned not less than three months nor more than three years."

After the verdict, and before the judgment, the plaintiff in error filed his motion in arrest of judgment, as follows:

"Now comes the defendant after the rendition of the verdict of the jury finding him guilty as charged in the sixth count of the indictment and before judgment and sentence, and moves the court to arrest the judgment in this case, upon the ground that the sixth count of the indictment is too vague and uncertain to authorize a judgment and sentence against the defendant."

Afterwards an amended motion in arrest of judgment was filed, as follows:

"By leave of the court first had and obtained the defendant amends his motion in arrest of judgment by adding the following grounds:

"First. The said sixth count of the indictment fails to show that there was a warehouse provided by law to which the spirits alleged to have been concealed should have been removed.

"Second. That the jury separated before the verdict of the jury was returned into court."

The overruling of this motion was assigned as error.

Mr. J. A. W. Smith for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendants in error.

Mr. Justice McKenna, after stating the case, delivered the opinion of the court.

Section 3271 of the Revised Statutes provides that "every distiller shall provide, at his own expense, a warehouse, to be

situated on and to constitute a part of his distillery premises, and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall be paid; . . . and such warehouse, when approved by the Commissioner of Internal Revenue on report of the collector, is hereby declared a bonded warehouse of the United States, to be known as a distillery warehouse, and shall be under the direction and control of the collector of the district and in charge of an internal revenue storekeeper assigned thereto by the Commissioner."

Section 3287 provides that all distilled spirits shall be drawn from the receiving cisterns into casks of a designated capacity and the quantity of spirits marked thereon, "and shall be immediately removed into the distillery warehouse," and stamps designating the quantity of spirits shall be applied thereto.

Other sections provide that no distilled spirits upon which the tax has been paid shall be stored or allowed to remain on any distillery premises, and such spirits found in a cask containing five gallons or more without having the stamp required by law shall be forfeited.

To secure the enforcement of this provision, section 3296 was enacted.

Plaintiff in error says:

"It seems clear that section 3296 of the Revised Statutes intended to provide a punishment for a distiller who had complied with the various provisions of chapter four of the Revised Statutes, and had provided a warehouse as required by section 3271, and then concealed or aided in the concealment of distilled spirits which had been removed, the tax not having been paid, to a place other than the distillery warehouse so provided."

And it hence claimed that the indictment is too uncertain to sustain the judgment, because it does not inform the defendant that a warehouse was provided in which the spirits which he is charged to have concealed should have been stored until the tax was paid. Undoubtedly, the statute was intended to punish a distiller who violated its provisions. It was also intended to punish any one else who did, and the

offence could be committed by a removal of spirits from the premises before storage in the distillery warehouse or by concealment of the spirits so removed. And it is this concealment which the indictment charges, and it sufficiently alleges the existence of a warehouse. It also alleges that the tax had not been paid. The offence was purely statutory. In such case it is generally sufficient to charge the defendant with acts coming within the statutory description in the substantial words of the statute without any further expansion of the matter. *United States* v. *Simmons*, 96 U. S. 360; *United States* v. *Britton*, 107 U. S. 655.

One of the acts which is made an offence by section 3296 is the concealment of distilled spirits on which the tax has not been paid, removed to a place other than the distillery warehouse provided by law. The indictment charges in the language of the statute the performance of that act at a particular time and place. It was therefore sufficiently certain.

As to the second ground of motion in arrest of judgment, it is enough to say that there is nothing in the record to show that the jury separated before the verdict was returned into court, but the record does show that a sealed verdict was returned by the jury by agreement of counsel for both parties in open court and in the presence of the defendant. This verdict was rightly received and recorded. *Commonwealth* v. *Carrington*, 116 Mass. 37.

The judgment is

Affirmed.

(16,403.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 245.

WALTER H. HARRISON, PLAINTIFF IN ERROR,

vs.

FRANKLIN J. MORTON.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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1 In the Court of Appeals of Maryland.

Filed September 21st, 1896.

WALTER H. HARRISON, Plaintiff,
vs.
FRANKLIN J. MORTON, Defendant. } At Law.

And now comes Walter H. Harrison, plaintiff herein, and says that on or about the seventeenth day of June, 1896, this court entered judgment herein in favor of the defendant, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this plaintiff; all of which will more in detail appear from the assignments of errors, which *is* filed with this petition.

2 Wherefore this plaintiff prays that a writ of error may issue in this behalf for the correction of errors so complained of by the Supreme Court of the United States, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Supreme Court of the United States.

WM. PINKNEY WHYTE,
Attorney for Plaintiff.

3 In the Supreme Court of the United States.

Filed September 21st, 1896.

WALTER H. HARRISON, Plaintiff,
vs.
FRANKLIN J. MORTON, Defendant. } At Law.

Assignment of Errors.

And now comes the said Walter H. Harrison, plaintiff, by William Pinkney Whyte, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit, in that the trial court and the court of appeals of Maryland and each of them erred in giving judgment for the defendant, whereas judgment should have been given on the pleadings and evidence

4 for the plaintiff.

2. The court aforesaid erred in the admission of evidence offered by the defendant in the following instances, to wit:

a. In the testimony given by the defendant as a witness in his own behalf upon the trial in answering the question put to him by his own attorney under the following circumstances, to wit:

The plaintiff offered evidence tending to show that the contract sued on was signed and sealed by the plaintiff and defendant and was left in the possession of the defendant as a complete and operative instrument according to its terms, and that in accordance with the contract and shortly after its execution the plaintiff executed to the defendant an assignment of his right to the invention therein

mentioned, on which application for a patent was then pend-
5 ing, and that the defendant afterwards employed and paid patent attorneys to procure from him the patent from the United States and from the government of other countries, and that the application for a patent was allowed by the United States in December, 1894, and letters patent afterwards granted therefor, dated January 22, 1895.

The defendant offered testimony tending to show the circumstances under which the agreement sued on was signed, and then offered himself as a witness. After testifying as to the set-off pleaded by him, the following question was put to him, viz:

"Now, Mr. Morton, passing from that for the time being, so as not to detain the court, two papers, two duplicates of one paper, dated the 8th of December, 1894, have been offered in evidence, the general purport of which is an agreement on your part to pur-
6 chase certain devices—patent devices—for one hundred thousand dollars, and these are dated December 8, 1894. Now I want to ask you whether, in the early part of 1894, you had had any conversation with Harrison and with Campbell with reference to that device—that patent; if so, what did you agree, and on what terms to it, in connection with that device and that patent device?"

The plaintiff objected to this question, but his objection was overruled, and the witness was allowed to answer it:

"Mr. Harrison told me that Mr. Campbell had a patent for making kegs; he came into my office and asked me to go up to his office and look at it; I went up there and saw him, and he was in my office afterwards, and we talked there about it being a desirable thing and if it could be used in conjunction with the old company.

7 "He came into my office afterwards, and also Mr. Campbell was there, and they talked about it and about its being a desirable thing and the benefit that would come in taking hold of it, or something to that effect, and I told them I would not do anything at all until I got the money he owed me. I would not go into any agreement or have anything to do with him until I got my money that was owing. He also talked about how, if it was taken, how much benefit each one would get; that I would get a benefit, Mr. Harrison would get a benefit, and Mr. Campbell would get a benefit, and I told them there, the ones that made the talk. Mr. Harrison made the talk and I sat and listened. I did not make any agreement, no arrangement or no understanding at all, and I told them I would not have anything to do with him until he paid me my money, and then he asked me if I would take it in
8 trust, and I told him yes; I would take it in trust. He said there was a small amount of expenses in getting out the patents, &c. Well, I said, I would pay that; I would take it in trust for them and pay that. He said Mr. Campbell had given it to him in trust and asked me if I would take it in trust. That was the way of that. He said there would be some small expenses of getting out the patents in Washington."

b. In the testimony given by the defendant as a witness in his

own behalf upon the trial in answering the question put to him by his own attorney as follows:

Mr. CARTER: Now, Mr. Morton, there has been offered in evidence by us this morning that an arrangement by which you advanced $2,500.00 to enable Mr. Harrison to exploit this North Carolina gold mine. What representations, if any, did Mr. Harrison make
9 to you about that gold mine in connection with the money he owed you on other occasions?

This question was objected to by the plaintiff's counsel because the transaction to which it referred took place on the 1st of November, while the contract in suit was dated December 8th, 1894, and because the question was leading and not bearing on the question of fraud in procuring this contract.

c. In the testimony given by the defendant as a witness in his own behalf upon the trial in answering the question put to him by his own attorney as follows:

"Now, prior to the 8th of December, what had been the only talk that you had had with Harrison or Campbell or either of them with reference to this device? What had you been asked to do by them, and what had you said that you would do? Now, first, what had you been asked to do?"

10 The testimony proposed to be elicited by this question could only be admissible in support of the issue of fraud or undue influence in the procurement of the signature of the appellee to the agreement sued on, and consequently, inasmuch as no testimony of fraud or undue influence was offered, this question was improperly allowed to be answered.

d. The court as aforesaid erred in the admission of evidence offered by the defendant; which evidence was in substance as follows:

At the trial it was proved that on the 11th day of September, 1894, Henry Campbell made to the plaintiff an assignment of one-half half interest in his then pending application to the United States Patent Office for a patent for the invention mentioned in said assignment, and that afterwards, on or about the 26th of No-
11 vember, 1894, he made to the plaintiff a further assignment of all his interest in his said pending application and in and to the patent thereon whenever the same should thereafter be granted.

On the 8th day of December, 1894, the agreement sued on was executed, and on the 10th of December, 1894, the plaintiff executed to the defendant and the defendant accepted an assignment, dated the 8th day of December, 1894, of all the plaintiff's interest in said machine and patent. The patent was allowed by the United States Patent Office in December, 1894, and on the 22d day of January, 1895, a patent was issued by the United State- in the name of said Henry Campbell for the invention described in the two assignments from said Campbell to the plaintiff and from the plaintiff to the defendant.

The defendant, for the purpose of sustaining the issue
12 joined on the said second and third supplemental pleas on equitable grounds, proposed to prove that in January, 1892,

said Henry Campbell, for the alleged consideration of $90,000 in capital stock of the "Campbell Barrel Machine Company of Baltimore City," offered to sell certain inventions mentioned in his written proposition to that company for barrel and keg machines; that his proposition was accepted by said Campbell Barrel Machine Company, and that the machine sold by him on September 11th, 1894, and November 26, 1894, and the letters patent for which he had applied, and which were pending at the time of said sale to the plaintiff, were covered by the said sale made by him in January, 1892, to the said Campbell Barrel Company.

In order to prove this alleged sale by Campbell to the
13 Campbell Barrel Machine Company the defendant offered the book of minutes of said Campbell Barrel Machine Company showing the proceedings held at a special meeting of the shareholders on January 9th, 1892, at which his proposition to make said sale to said company was presented and accepted.

The plaintiff objected to the admission of said minutes, but the court overruled his objection and allowed the minutes to be read in evidence.

3. The courts below and each of them erred in rejecting the plaintiff's first prayer, as offered by the plaintiff.

4. The courts below and each of them erred in rejecting the plaintiff's third prayer.

5. The courts below and each of them erred in rejecting the plaintiff's fourth prayer, and in granting in lieu thereof the in-
14 struction prepared by the court as a substitute for it.

6. The said courts below and each of them erred in granting the defendant's first prayer.

7. The said courts below and each of them erred in granting the defendant's second prayer.

8. That the courts below and each of them erred in misconstruing the patent laws of the United States against the right of the plaintiff in holding that the assignment of the patent in proceedings set out by Henry Campbell, inventor, to the plaintiff (because it did not contain a request to the Commissioner of Patents to issue the letters patent to the assignee) only conveyed an equitable title to the assignee and not a valid legal title.

And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid; may be reversed, annulled, and altogether held
15 for nothing, and that the plaintiff in error may be restored to all things which he hath lost by occasion of said judgment.

WM. PINKNEY WHYTE,
Attorney for Plaintiff in Error.

In the Court of Appeals of Maryland.

WALTER H. HARRISON, Plaintiff, *vs.* FRANKLIN J. MORTON, Defendant. } At Law. No. 34. April Term, 1896.

This seventeenth day of September, 1896, came the plaintiff, by William Pinkney Whyte, his attorney, and filed herein and presented to the court his petition praying for the allowance of a writ of error intended to be urged by him; praying also that a
16 transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error.

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Writ of Error. Filed September 21st, 1896.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of Maryland, Greeting:

Because in the record and proceedings, as also in the rendi-
17 tion of the judgement of a plea which is in the said court of appeals of Maryland, before you or some of you, between Walter H. Harrison, plaintiff, and Franklin J. Morton, defendant, a manifest error hath happened, to the great damage of the said Walter H. Harrison, plaintiff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein
18 to correct that error what of right and according to the laws and customs of the United States should be done.

The Seal of the Circuit Court, Maryland.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 17th day of September, in the year of our Lord one thousand eight hundred and ninety-six.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland, in the Fourth Circuit.

Allowed by—
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

19 (*Citation. Filed September 21st*, 1896.)

UNITED STATES OF AMERICA, *ss:*

To Franklin J. Morton, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of Maryland, wherein Walter H. Harrison is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James McSherry, chief judge of the court of appeals of Maryland, this seventeenth day of September,
20 in the year of our Lord one thousand eight hundred and ninety-six.

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

On this 19th day of September, in the year of our Lord one thousand eight hundred and ninety-six, personally appeared William P. Hall before me, the subscriber, William H. Jones, a notary public of the State of Maryland in and for the city of Baltimore, and makes oath that he delivered a true copy of the within citation to Franklin J. Morton, the defendant in error, by delivering the same into his hands, at his office, in Firemen's building, Baltimore.

WM. P. HALL.

Sworn to and subscribed the 19 day of September, A. D. 1896, as witness my hand and notarial seal.

[Seal of William H. Jones, Notary Public, Baltimore.]

WM. H. JONES,
Notary Public.

21 Service of copy of the within citation admitted this 19th day of September, 1896.

____ ____,
Attorney for Franklin J. Morton, Defendant in Error.

22 STATE OF MARYLAND, *sct:*

At a court of appeals for the State of Maryland begun and held for the said State, at the city of Annapolis, on the first Monday in April, being the sixth day of said month, in the year of our Lord eighteen hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth—

Hon. James McSherry, chief judge;
" Henry Page,
" George M. Russum,

Hon. David Fowler,
" A. Hunter Boyd,
" Charles B. Roberts,
" John P. Briscoe,
" Wm. Shepard Bryan;
J. Frank Ford, clerk—
among other were the following proceedings, to wit:

23 Appeal from the Baltimore city court.

WALTER H. HARRISON *vs.* FRANKLIN J. MORTON. } In the Baltimore City Court, September Term, 1895.

February 8, 1895.—The following declaration was filed, to wit:

In the Baltimore City Court.

Walter H. Harrison, by William Pinkney Whyte, John P. Poe and Sons and William A. Fisher, his attorneys, sues Franklin J. Morton for that, on the 8th day of December, 1894, the plaintiff being the owner of a certain machine, method, and device for making barrels and kegs, under assignment thereof from Henry Campbell, the inventor thereof, for the issuing of letters patent, whereon and wherefor application has been theretofore made and was then pending in the Patent Office of the United States, entered into a certain agreement under his hand and seal, bearing date the 8th day of December, 1894, aforesaid, with the defendant, whereby he sold and conveyed to the defendant all his right, title and interest in said machine, method and device, and in said letters patent when issued, upon the following consideration, to wit: one hundred thousand dollars ($100,000.00) to be paid in cash by the defendant to the plaintiff within ten days after the issuing of said letters patent by the United States; and in further consideration of the transfer and delivery to the plaintiff of two thousand full-paid and non-assessable shares of the par value of one hundred dollars ($100.00) per share of the capital stock of a corporation to be incorporated and organized by the defendant under the laws of Maryland, with a capital stock of five hundred thousand dollars ($500,000.00); and in further consideration of the payment to the plaintiff of a sum equal to forty per cent. of the gross royalties upon the sales of said patented articles, under any and all patents that might be issued for said machine, method and device by the United States and any and all other governments.

The plaintiff, in fact, says, that the defendant, in and by the contract aforesaid, purchased from the plaintiff the said machine, method and device and the said letters patent, for the issuing of which application was then pending, and in said contract agreed to pay for the same, as hereinbefore mentioned, to wit, that he would pay to the plaintiff in cash one hundred thousand dollars ($100,000.00) within ten days after the issuing of said letters patent by the United States upon the said application so as aforesaid then

pending; and further, that he would proceed to organize,
24 under the laws of Maryland, a corporation with a capital stock of five hundred thousand dollars ($500,000.00) for the purpose of manufacturing or causing to be manufactured the said patented articles under said letters patent; and that he would pay to the plaintiff, from time to time, said forty per cent. of the gross receipts that might be received upon sales of said patented articles under any and all letters patent that might be issued upon said machine, method and device.

And the plaintiff, in fact, says, that the application for said letters patent was granted and letters patent for said machine, method and device were duly issued by the United States to said Henry Campbell, the inventor thereof, assignor to the plaintiff *plaintiff*, and that good and sufficient assignment of said letters patent have been duly executed and recorded in the Patent Office at Washington, and have been delivered to and accepted by the defendant, the said letters patent having been duly granted and issued on the 22nd day of January, 1895.

And the plaintiff further says, that under the terms of said agreement of the 8th of December, 1894, between him and the defendant, the plaintiff was entitled to receive from the defendant, and the defendant was bound to pay to the plaintiff the said sum of one hundred thousand dollars ($100,000.00) within ten days after the 22nd day of January, 1895; that after the expiration of said ten days the plaintiff made due demand upon the defendant for the payment to him of the said one hundred thousand dollars ($100,000.00), and that the defendant should go on to carry out the stipulations of said contract by the incorporation and organization under the laws of Maryland of said company, and the transfer to the plaintiff of two thousand shares of the capital stock thereof, of the par value of one hundred dollars ($100.00) per share, as provided in said contract, but the defendant not regarding his said agreement in said contract, hath refused and doth still refuse to pay to the plaintiff the said sum of one hundred thousand dollars ($100,000.00), or to incorporate and organize said company, as in said contract provided, to the great damage of the plaintiff, for which he brings this suit and claims three hundred thousand dollars ($300,000.00).

WM. PINKNEY WHYTE,
JOHN P. POE & SONS,
WILLIAM A. FISHER,
Attorneys for Plaintiff.

February 25, 1895.—The following pleas and plea of set-off was filed, to wit:

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

And the said Franklin J. Morton, the defendant in this action, by Bernard Carter and Henry Stockbridge, Jr., his attorneys, says:

For a first plea, that he never was indebted as alleged, and for a second plea says that he did not promise as alleged.

25 And for a third plea says that the plaintiff is indebted to the defendant in an amount equal to or greater than the plaintiff's claim, for money payable by the plaintiff to the defendant.

1st. For money loaned by the defendant to the plaintiff.

2nd. And for money paid by the defendant for the plaintiff, at his request.

3rd. And for money found to be due from the plaintiff to the defendant on accounts stated between them; which several amounts the defendant is willing to set off against the plaintiff's claim.

BERNARD CARTER,
HENRY STOCKBRIDGE, JR.,
Attorneys for Defendant.

February 27, 1895.—Demand for a bill of particulars of defendant's set-off filed.

March 22, 1895.—General demurrer to 1st and 2nd pleas filed.

April 11, 1895.—The following bill of particulars to set-off was filed, to wit:

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

Franklin J. Morton, the defendant, for compliance with the plaintiff's demand for a bill of particulars under the plea of set-off heretofore filed by the defendant, now files the following account, to wit:

To Franklin J. Morton, Dr.

1891.			
Dec.	19.	To cash loaned	$250 00
1892.			
Jan.	14.	" " "	338 00
Feb'y	11.	" " "	125 00
M'ch	10.	" " "	50 00
	15.	" " "	250 00
Aug.	17.	" " "	1,000 00
1893.			
Jan.	6.	" " "	909 00
Feb.	13.	" " "	250 00
Feb.	21.	" " "	560 00
	23.	" " "	1,000 00
	27.	" " "	1,500 00
M'ch	6.	" " "	1,000 00
	13.	" " "	593 00
1894.			
M'ch	6.	" " "	230 00
Dec.	1.	To cash paid Leavitte, Wood & Keith at the request and for the account of Walter H. Harrison	200 00

1893.			
May	9.	To cash loaned	5,000 00
June	2.	" " "	300 00
26			
July	7.	To cash loaned	400 00
	24.	" " "	5,200 00
Aug.	22.	To cash loaned, note for $2,500, at sixty days, with interest	2,500 00
Sept.	2.	To cash paid at the request and for the account of Walter H. Harrison in connection with the purchase of property No. 1823 Maryland Ave	400 00
Oct.	7.	" " "	400 00
1893.			
Dec.	22.	To cash paid at the request and for the account of Walter H. Harrison in connection with repairs, improvements and expenses upon property No. 1823 Maryland avenue	350 00
1894.			
Jan'y	9.	To cash paid for same account	281 40
	12.	" " "	10 00
	26.	" " "	60 00
Feb.	6.	" " "	189 75
	10.	" " "	51 81
	16.	" " "	200 00
Mar.	5.	" " "	17 67
	26.	" " "	75 00
	12.	" " "	22 50
April	2.	To cash loaned	30 00
	9.	To cash paid, as above, for Maryland Avenue property No. 1823	90 00
May	19.	To cash paid for Maryland Ave. property	49 85
	21.	" " " "	140 66
	22.	" " " "	9 60
June	12.	" " " "	15 00
Oct.	1.	" " " "	90 00
Dec.	1.	To cash loaned	40 00
1895.			
Jan.	1.	To cash paid, as above, for Maryland Ave. property No. 1823	90 00
1894.			
Nov.	1.	To cash loaned Walter H. Harrison, note for $2,500, at sixty days, with interest, in connection with purchase of property No. 1821 Maryland avenue, and North Carolina gold mine	2,500 00
1893.			
Sept.	29.	To cash paid F. C. Nicodemus, premium for insurance on life of Walter H. Harrison and agreed to be paid by said Harrison	750 00

1894.				
Jan.	27.	To cash paid same, account of premium....	747	37
May	28.	" " "	762	01
Sept.	21.	" " "	2,214	00
Dec.	14.	" Harrison, purchase of machines.....	275	00
27		To cash paid premium on life insurance upon life of Stephen J. Thompson for account of Walter H. Harrison.....	274	90
			$31,791	52

BERNARD CARTER,
H. STOCKBRIDGE, JR.,
Attorneys for Defendant.

April 15, 1896.—Plea of not indebted and never promised to set off filed and issues joined.

April 24, 1895.—Demurrer to 1 and 2 pleas of defendant sustained with leave to plead anew.

May 1, 1895.—The defendant filed the following pleas, to wit: Plea of *non est factum*, fraud, and on equitable grounds, to wit:

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

And the defendant, by Bernard Carter and Henry Stockbridge, Jr., his attorneys, says, for a plea to the declaration of the plaintiff heretofore filed, that the alleged agreement in the declaration mentioned is not the act and deed of the defendant.

BERNARD CARTER,
H. STOCKBRIDGE, JR.,
Attorneys for Defendant.

STATE OF MARYLAND, *City of Baltimore*, } *To wit:*

On this first day of May, in the year one thousand eight hundred and ninety-five, before me, the subscriber, a justice of the peace of the State of Maryland, in and for Baltimore city, personally appeared Franklin J. Morton, the above-named defendant, and made oath in due form of law that the plea above pleaded is true; and further, that he, the affiant, believes that he will be able, at the trial of the cause, to produce sufficient evidence to support the said plea, and that he is advised by counsel to file the said plea.

STEPHEN S. CLARK, *J. P.*

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

And the defendant, by Bernard Carter and Henry Stockbridge, Jr., his attorneys, says, for an additional plea, that the signature of

the defendant to the alleged agreement was procured by the fraud of the plaintiff.

And for a second additional plea, the defendant, by his attorneys aforesaid, says that the signature of the defendant to the alleged
28 agreement was procured by the undue influence of the plaintiff, exerted and practised by the plaintiff upon the defendant.

BERNARD CARTER,
H. STOCKBRIDGE, JR.,
Attorneys for Defendant.

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

And the defendant, by Bernard Carter and Henry Stockbridge, Jr., his attorneys, says for a supplemental plea and for defence on equitable grounds, that there was no consideration for the agreement alleged in the plaintiff's declaration, and therefore the said alleged agreement is utterly null and void.

And for a second supplemental plea, and for defence on equitable grounds, he says that at the date of the alleged agreement the plaintiff was not the owner of, and had no valid title to the machine, method and device described in the application filed in the Patent Office in the name of Henry Campbell, serial number 522,226, mentioned in the declaration; and the defendant says that therefore the said agreement was without consideration and is null and void.

And for a third supplemental plea, and for defence on equitable grounds, the defendant, by his attorneys aforesaid, says that at the time of the alleged assignment to the defendant mentioned in the declaration of the patent issued for the machine, method and device described in the said application, serial number 522,226, the plaintiff was not the owner of and had not a valid title to the said patent.

BERNARD CARTER,
H. STOCKBRIDGE, JR.,
Attorneys for Defendant.

May 6, 1895.—The following replication to defendant's pleas was filed, to wit:

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

The plaintiff, by William Pinkney Whyte, John P. Poe & Sons and William A. Fisher, joins issue on the defendant's first plea; and for replication to the defendant's additional plea, he says that the signature of the defendant to the agreement sued on was not procured by the fraud of the plaintiff.

And for replication to the second additional plea of the defendant, he says that the signature of the defendant to the agreement sued on was not procured by the undue influence of the plaintiff exerted and practised by the plaintiff upon the defendant.

29 And for a replication to the first supplementary plea on equitable grounds, he says that there was consideration for the agreement sued on.

And for a replication to the second supplementary plea on equitable grounds, he says that at the date of the agreement sued on, he was the owner of and had a valid title to the "machine, method and device" described in the application filed in the Patent Office in the name of Henry Campbell, serial number 522,226, mentioned in the declaration.

And for replication to the third supplementary plea on equitable grounds, plaintiff says that at the time of the assignment to the defendant of the "machine, method and device" described in the application, serial number 522,226, the plaintiff was the owner of and had a valid title to said "machine, method and device," and to the patent therefor, when issued.

WM. PINKNEY WHYTE,
JOHN P. POE & SONS,
WILLIAM A. FISHER,
Attorneys for Plaintiff.

November 13, 1895.—Issues joined (short) on all the replications to defendant's pleas.

November 13, 1895.—Case tried before the judge at large without a jury.

December 13, 1895.—Verdict for the defendant for $35,091.65, and judgment on the verdict with interest and costs.

December 16, 1895.—The following motion by defendant was filed for the court to find on the several issues in this case:

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

To the Honorable John J. Dobler:

The defendant, Franklin J. Morton, hereby respectfully asks you, in your capacity of the judge before whom the issues of fact in the above-entitled case were tried, to enter on the record your findings on each of the issues joined in said case, in order that the court of appeals may be thereby informed how each of said issues were found by you in reaching the verdict rendered by you in said case on December 13th, 1895.

BERNARD CARTER,
ED. H. GANS,
H. STOCKBRIDGE, JR.,
Attorneys for Defendant.

It is, this 16th day of December, 1895, ordered, that the foregoing application stand for hearing on December 21, 1895, provided a copy of the same, and of this order, be served on the counsel for W. H. Harrison, plaintiff, on or before December 17, 1895.

JOHN J. DOBLER.

30 December 21, 1895.—The following answer to the motion was filed, to wit:

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

To the Hon. John J. Dobler, the judge of the Baltimore city court:

The plaintiff in this case, in reply to the petition filed by the defendant on the 16th day of December, 1895, respectfully says, that there is no power in the judge, sitting in his court, as a jury, to make any special findings in the respective issues joined in this case, after the recording of the verdict found by the court on December 13, 1895, and he respectfully protests against the entering upon the record the findings referred to in said petition.

WM. PINKNEY WHYTE,
JOHN P. POE,
For Plaintiff.

December 24, 1895.—Appeal prayed to the court of appeals by plaintiff and affidavit that the appeal is not taken for delay.

January 3, 1896.—Time for signing bill of exceptions extended by order of court until February 20, 1896.

February 16, 1896.—The following agreement of counsel was filed, to wit:

HARRISON
vs.
MORTON. } In the Baltimore City Court, before Judge Dobler.

It is hereby agreed, that any of the original papers or documents offered in evidence in the above-entitled case by either side, may be used in the court of appeals as fully as if the same had been set out at length in the record, and that this agreement shall be included in the record.

W. PINKNEY WHYTE,
JOHN P. POE, *For Plaintiff.*
BERNARD CARTER,
GANS & HAMAN,
HENRY STOCKBRIDGE,
Attorneys for Defendant.

February 18, 1896.—Motion for the judge at large to enter his findings upon each issue in this case "overruled."

Plaintiff's Bill of Exceptions.

The plaintiff, to maintain the issue on his part joined, offered in evidence a petition filed in this case June 26th, 1894, together
31 with the order of the court on the defendant, to show cause why the prayer of the petition should not be granted, and also offered in evidence the answer of the defendant to that petition filed in the case July 15, 1894, which were read to the court sitting as court and jury.

Petition.

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

To the honorable the judge of said court:

The petition of the plaintiff respectfully shows unto the court, that the defendant, Franklin J. Morton, holds in his possession and under his power, the contract between the plaintiff and the defendant mentioned in the declaration in this case, and bearing date on the 8th day of December, 1894, hath duplicate thereof, and the plaintiff therefore moves the court that it will require the said defendant, by some certain day to be fixed by the court, to produce a copy of said contract duly certified by a justice of the peace, and to file the same in this cause.

WM. PINKNEY WHYTE,
JOHN P. POE & SONS,
WILLIAM A. FISHER,
Counsel for Plaintiff.

STATE OF MARYLAND, } *To wit:*
City of Baltimore, }

I, G. Evett Reardon, a justice of the peace of the State of Maryland, in and for the city of Baltimore aforesaid, do hereby certify, that on this 26th day of June, 1895, before me, personally appeared Walter H. Harrison, the plaintiff in the above-entitled cause, and made oath in due form of law, that the foregoing petition and motion is not intended for delay.

G. EVETT REARDON, *J. P.*

Ordered by the court, this 26th day of June, 1895, that the defendant shall produce and file in the cause a copy of the contract in the foregoing petition and motion mentioned, duly certified by a justice of the peace of the State of Maryland, in and for the city of Baltimore, on or before the 15th day of July, unless sufficient cause to the contrary be shown on or before the 15th day of July, 1895; provided a copy of the petition and motion, and of this order, be served on the defendant, or either of his counsel of record, on or before the 5th day of July next.

JOHN J. DOBLER.

32 *Answer.*

WALTER H. HARRISON
vs.
FRANKLIN J. MORTON. } In the Baltimore City Court.

To the honorable the judge of said court:

The answer of the defendant, Franklin J. Morton, to the petition filed in the above-entitled cause on the 26th day of June, 1895, and to the order of the court passed thereon on the same day, respect-

fully shows that he does not hold in his possession or under his power any contract between the plaintiff and the defendant, such as is mentioned in the declaration in this case, bearing date, as alleged in the said petition, to be on the 8th day of December, 1894, and not having possession, nor having under his power any such contract, he is, of course, unable to produce the same or any copy thereof.

BERNARD CARTER,
EDGAR A. GANS,
H. STOCKBRIDGE, JR.,
Attorneys for Defendant.

FRANKLIN J. MORTON.

STATE OF MARYLAND, *Baltimore City,* } *sct:*

I hereby certify, that on this 11th day of July, 1895, before the subscriber, a justice of the peace of the State of Maryland, in and for Baltimore city aforesaid, personally appeared Franklin J. Morton, the above-named respondent, and made oath in due form of law that the facts set forth in the foregoing answer are true to the best of his knowledge and belief.

THOS. C. BAILEY, *J. P.*

The plaintiff then, by his counsel, offered in evidence the notice given to the defendant for the production of the contract set out in the declaration, and which notice is dated November 9th, 1895.

WALTER H. HARRISON *vs.* FRANKLIN J. MORTON. } In the Baltimore City Court.

To the defendant, Franklin J. Morton:

You are hereby notified to produce at the trial of this cause the contract in writing between the plaintiff and defendant in reference to a certain device, method and machine for making and forming barrels and kegs, and patents to be granted therefore, dated December 8th, 1894.

JOHN P. POE,
WILLIAM A. FISHER,
Attorneys for Plaintiff.

Thereupon the defendant, by his counsel, produced the said contract, which is in the words and figures following:

33 This agreement, made this 8th day of December, 1894, between Walter H. Harrison, in the city of Baltimore, of the first part, and Franklin J. Morton, of the said place, of the second part:

Whereas, the said party of the first part is the owner by assignment from Henry Campbell, dated November 26, 1894, and duly recorded in the Patent Office of the United States, at Washington, of a certain machine, device and method for making and forming

barrels and kegs, for a patent upon which application has been filed in the said Patent Office, in the name of said Henry Campbell, serial No. 522,226, as recorded in Liber U., 50, page 22, Patent Records. Now this agreement witnesseth: First. That the said party of the first part hereby sells, assigns and transfers to the said party of the second part, all his rights, interest, title, use and control of and in said machine, device and method, and of and in any and all patents that may be issued by the United States of America, the Dominion of Canada, the Kingdom of Great Britain and Ireland, the Empires of Germany, Austria and Hungary, the Republic of France and any and all other countries to which said party of the first part may apply for a patent or patents upon said machine, device or method, for the following consideration, to wit:

One hundred thousand dollars in money to be paid to the said party of the first part by the said party of the second part within ten days after the allowance by the United States Patent Office of the patent upon said machine, device and method for which application has been made as aforesaid, and is now pending; and in addition to said one hundred thousand dollars in money, the said party of the second part is to transfer or cause to be transferred to the said party of the first part, two hundred thousand dollars of the full-paid stock of the capital stock of the corporation to be formed by the party of the second part and his associates, under the laws of Maryland, for the manufacture and sale of said patented article, the capital stock of which said corporation is to be five hundred thousand dollars.

The party of the second part is to pay, as additional consideration of said sale and transfer of said machine, device and method and patent or patents thereof, a sum equal to forty per cent. of the gross royalties that shall be received by said corporation from the sales of said patented article, under any and all of said patents.

Second. The said party of the second part hereby buys from the said party of the first part, the said hereinbefore-mentioned machine, device and method for making and forming barrels and kegs, and the said patent and patents when issued, and agrees to pay for the same to the party of the first part as hereinbefore recited, to wit: one hundred thousand dollars in money, within ten days after the allowance by the United States Patent Office of the pending application for said patent; two hundred thousand dollars of the full-paid stock of the capital stock of the said hereinbefore-mentioned corporation, and forty per cent. of the gross royalties that shall be received by said corporation upon the sales of said patented article, under any and all of the said patents; payments of said forty
34 per cent. of said gross royalties to the said party of the first part to be made monthly by the said party of the second part, within the first 15 days of each and every month.

Third. Said party of the second part further agrees, that he will, at once, proceed to form and organize a corporation under the laws of Maryland, for the manufacture and sale of said patented article, with a capital stock of five hundred thousand dollars; said corpora-

tion to be known by the name of the Eureka Manufacturing Company.

Witness our hands and seals this 8th of December, 1894.

WALTER H. HARRISON. [SEAL.]
FRANKLIN J. MORTON. [SEAL.]

Test: CAREY COALE.
HENRY CAMPBELL.

Test: CAREY COALE.
HENRY CAMPBELL.

BALTIMORE, MD., *Dec'r* 22, 1894.

Received of Franklin J. Morton fifteen hundred dollars on ac. of the within contract.

W. H. HARRISON. [SEAL.]
HENRY CAMPBELL. [SEAL.]

The plaintiff then, further to maintain the issues on his part joined, on his behalf produced HENRY CAMPBELL, a competent witness, who testified as follows:

That he has looked at the paper, the contract above referred to and above inserted in this bill of exceptions, and recognizes his signature thereon as his signature. The signatures of Walter H. Harrison and Franklin J. Morton thereon are their proper signatures. "Test: Carey Coale, Henry Campbell." So far as Carey Coale's signature is concerned, I did not see him put to the paper his signature. Nor did I see Walter Harrison or Morton sign the paper. They, Morton and Harrison, gave me the papers to read, and Mr. Morton asked me to put my signature to the contract. It was signed when Morton gave it to me to read. I read it and then Morton asked me to witness it, which I did, and that is the way my signature came there.

Cross-examination:

Mr. GANS: Mr. Morton and Mr. Harrison showed you that paper after it had been executed—signed?

A. Yes, sir.

Q. When was that?

A. On the 22d day of December, 1894, I think; I am not positive.

Q. Did you witness anything else on that same day?

A. Yes, sir; I witnessed the payment of $1,500.

Q. You say you did witness the payment of $1,500?

A. Yes, sir.

Q. Do you mean to say that you witnessed the money being paid?

35 A. Well, I didn't count the money; I was sitting at the end of Mr. Morton's desk.

Q. I ask you whether you witnessed anything else on that day? Did you witness any other signatures? You say you witnessed this matter of the payment of the money; you were sitting where?

A. At the end of Mr. Morton's desk.
Q. In what room?
A. In his back office.
Q. He has an office fronting on German street, has he not; that is, his back office?
A. I don't know. It is on the south side.
Q. Then there is a door leading into the corner office?
A. Yes, sir; into the corner office.
Q. You were sitting at the end of Mr. Morton's desk in his back office?
A. Yes, sir.
Q. Who else was there?
A. Mr. Harrison.
Q. What did you see done?
A. You asked me the question if I witnessed any other signature——
Q. (Interposing.) I ask you now, what did you see done?
A. I was reading the contract, and Mr. Morton and Mr. Harrison were talking about some money. Mr. Morton said he couldn't do it, didn't have it, or something of that kind; afterwards I heard Mr. Morton say, "5, 10, 11, 12, 13, 15." I saw him pass some money to Mr. Harrison; I didn't count the money. Then the document was given to me, the receipt was put down there, which I witnessed; Mr. Morton asked me to witness it. Mr. Harrison's name was signed to that document on the back.
Q. Let us get that a little more distinctly. You say you were sitting at the end of Mr. Morton's desk?
A. Yes, sir.
Q. Were you at the end farthest away from the front of the room?
A. Just as you come in the door.
Q. Where were Mr. Morton and Mr. Harrison?
A. Mr. Morton was sitting at his desk, and Mr. Harrison was sitting by the safe.
Q. Then you were not more than three or four feet from them, because that is a very small room?
A. Four or five feet off.
Q. You were reading this contract, you say?
A. Yes, sir; I was reading the contract.
36 Q. You had read it before, had you not?
A. Yes, sir; and I was reading it again. We both read it together.
Q. You know what the contract was?
A. Yes, sir.
Q. You say these two men were talking?
A. We had read the contract together, compared it?
Q. These two men were talking in the back room?
A. In the back room, all together. Then I don't remember exactly what conversation Mr. Morton had with Mr. Harrison, but I know it was something about money. I was paying more attention to the contract.

Q. You say you had already read the contract?
A. Yes, sir; I read it a second time.
Q. Did you ever see it before it was executed on the 8th of December?
A. No, sir; I never saw it before that.
Q. But you say you had read it before this particular time you are speaking of.
A. I had read it at that time—there and then—probably three or four minutes before.
Q. You say these men were talking about money; did you hear them say anything that you now recall?
A. I didn't charge my mind exactly with what passed, because I didn't pay much attention to it; it was none of my business; but I know they were talking about money.
Q. Was Mr. Morton sitting at his desk all the time?
A. All the time.
Q. Where did he get any of the money from that he paid?
A. I don't know; I suppose he got it out of his desk; at other times when he has paid me money, he has taken it out of his desk.
Q. Did you see him hand over any money?
A. Yes, sir.
Q. What kind of money was it?
A. Paper money.
Q. He handed over paper money?
A. Paper money.
Q. Did you see him count out the money?
A. No, sir; I heard, I couldn't see him. The corner of the desk was so that I couldn't see.
Q. It was a light desk like this, was it not?
A. No, sir; it was a roll-top desk.
Q. Do you say that there was a roll-top desk in that back room?
37 A. That is my best impression.
Q. Is that near the door as you go in?
A. Near the door, right-hand side.
Q. You were sitting right near there, because you were near the entrance?
A. I was right there at the end of the desk.
Q. So that, if this were the door (illustrating) as you come in, the desk would be there?
A. And the end would be that way.
Q. You were sitting there at that end?
A. At that end.
Q. And Mr. Morton was sitting at the roll-top desk?
A. At his seat.
Q. And where was Harrison?
A. Right over there, in between the other table and the safe.
Q. Do you mean to say that you saw him give money?
A. Yes, sir.
Q. Where did he get the money from?

A. I suppose he took it out of his desk.
Q. Did you see him take it out of any drawer in his desk?
A. No, sir. Whether he took it out of a drawer or from beneath the table, I don't know.
Q. I thought you said you did not see the money?
A. I saw him pass money.
Q. Did you not also say that you saw him count money?
A. I heard him count; I didn't see it.
Q. Let us get it straight. You say that there was a corner of the desk which prevented you from seeing?
A. From looking at the face of the desk, like that?
Q. There was a corner of the desk there, and you could not see, that is the reason you gave for not being able to see the money, as you heard him count it?
A. Yes, sir.
Q. And then you saw him hand over the money to Mr. Harrison?
A. Hand over some money—bills.
Q. Did you see the money?
A. Bills.
Q. Was it wrapped up?
A. No, sir; it was loose—separate.
Q. Separate bills?
A. Yes, sir.
38 Q. Now, let us get away from that for a moment. You were with Harrison all the time when you were there, were you not?
A. How do you mean?
Q. You went there with him?
A. Yes, sir.
Q. And staid there with him up to that time?
A. Yes, sir.
Q. And he and Morton were always together up to that time?
A. Yes, sir.
Q. Was it explained to you then how Mr. Morton happened to have $1,500 in money in his desk?
A. No, sir.
Q. When this conversation that you speak of began, did not Mr. Morton say he did not have money?
A. He said he couldn't afford it. First said he didn't have it, couldn't afford it.
Q. You sent word to Mr. Morton that you were going?
A. With him?
Q. Yes.
A. No, sir.
Q. Nor Harrison either, so far as you know?
A. I don't know.
Q. You saw him hand over a roll of bills?
A. No, sir; I saw him hand over some loose bills, not a roll.
Q. And they looked to you like money bills?
A. It was money, I am satisfied.
Q. You don't know how much there was?

A. I tell you I heard him say, "5, 10, 11, 12, 13, 14, 15."
Q. What was the amount?
A. I suppose he was counting the money.
Q. Do you know whether they were $5.00 bills or not?
A. I couldn't say what they were.
Q. Did you not see them well enough to know what any one of them was?
A. My eyesight is not good enough for that; I can't see through bills.
Q. Did Harrison tell you then what the amount was?
A. No, sir.
Q. On that day, did Mr. Morton give any check to Mr. Harrison?
A. I don't know.
Q. Where was his check book?
A. I don't know.
39 Q. Did you see him draw any check?
A. No, sir.
Q. If he had drawn any check, you could have seen it, could you not?
A. Very likely I might, and I might not.
Q. Why could you not see it?
A. Why should he show me any checks?
Q. It was a small room and you saw the money pass, as you say?
A. Yes, sir.
Q. And you were asked to witness the payment?
A. I did witness the payment. That is right.
Q. You were told to put your signature to it?
A. Yes, sir.
Q. Now, I ask you again whether Mr. Morton drew any check at that time?
A. I didn't see him draw any check.
Q. You did not see him draw any check?
A. Not up to that time.
Q. Did Mr. Harrison sign any receipt?
A. Receipt for money?
Q. Yes.
A. On the document—on the contract?
Q. Answer my question; did he sign that receipt?
A. Yes, sir; he signed a receipt for $1,500.00, which I witnessed.
Q. That is the receipt he signed which you saw?
A. That is what I saw.
Q. So that you did not see him sign any other paper in that room?
A. Yes, sir.
Q. You are quite sure about that?
A. Quite sure.
Q. You did not see him sign any check?
A. No, sir.
Q. You did not see him hand Mr. Harrison any check?
A. No, sir.
Q. You did not see Mr. Harrison have any check on that day?

A. No, sir.
Q. You and Harrison went out together?
A. I went out into the other room, while Mr. Harrison and Mr. Morton were talking, and waited for Harrison to come out.
40 Q. So that, as I understand your testimony, you saw Mr. Morton sitting at his desk, where he seemed to be counting out money, and you heard him say, "1, 2, 3, &c.," as you have described; and then you saw him hand over a roll of loose bills.
A. Not a roll; they were loose bills.
Q. I do not make any point about it being a roll. Who signed the $1,500 receipt?
A. Mr. Harrison signed a receipt for $1,500, and I witnessed it. That is right.
Q. You did not see him draw any check, nor did you see Mr. Harrison draw any other receipt?
A. No, sir.
Mr. CARTER: Mr. Campbell, did you not say to Mr. Gans, in the beginning of your cross-examination, that you did not see the money, but heard it counted, and that the reason you did not see it was because the corner of the desk prevented you?
A. As I have said all along, I said this: that I did not see the money excepting that he passed it from his own hands to Mr. Harrison.
Q. Did you not say that you did not see any money pass because your position at the desk was such that you could not see it; but that you heard it counted out? That is my question. Did you not say that?
A. No, sir.
Q. You did not say that?
A. No, sir; I don't think I did.
Q. What did you say about not being able to see the money?
A. I didn't see the money while he was counting it.
Q. While who was counting it?
A. While Mr. Morton was counting it.
Q. When did you see it?
A. When it was passed over.
Q. How many bills did you see passed over?
A. I couldn't say.
Q. You did not look at any of the bills?
A. No, sir.
Q. You say you heard him counting, "5, 10"—repeat that?
A. "5, 10, 11, 12, 13, 14, 15."
Q. Five what?
A. I don't know. I didn't see it.
Q. Did he say, "5, 10, 15"?
A. No, sir; he said, "5, 10, 11, 12, 13, 14, 15."
Q. You saw him pass those notes to Mr. Harrison?
A. I suppose they were the notes.
Q. All you heard him counting was 5, 10, 11, 13. 14, 15?
41 A. He kept counting up to 15, and then he passed these bills over to Mr. Harrison.

Q. You saw him pass them to Mr. Harrison?
A. Yes, sir.
Q. Why could you see him pass them to Mr. Harrison, when you could not see them when Morton himself was counting?
A. Harrison was sitting like that (illustrating), and Morton was sitting in front of him and between the two of us; he necessarily would have to pass.
Q. Mr. Morton remained in the same position, did he not, when he passed them?
A. No, sir. He was sitting at his desk like this (indicating).
Q. Fronting his desk?
A. Fronting his desk. He turned round like that (indicating), and passed it over this way.
Q. He turned around with his back to you, did he not?
A. No, sir.
Q. Did you not tell Mr. Gans that you were sitting at the desk next to the door?
A. Yes, sir.
Q. And you said Harrison was sitting between the two tables?
A. No, sir; he was sitting between the table and the——
Q. (Interposing.) And the desk?
A. No, sir; between the table and the safe.
Q. Then that was the side opposite you, was it not?
A. No, sir; it was a triangle.
Q. One moment. As you went in the door, you went and sat at the side of the desk next to the door, did you not?
A. Yes, sir.
Q. Now, where did you say Harrison was sitting?
A. Nearly in front.
Q. Nearly in front of whom?
A. Myself.
Q. On the same side of the room then?
A. On the left hand of Mr. Morton.
Q. Then Morton had his back to Harrison?
A. Nearly.
Q. When you could not see Mr. Morton counting the money, he was facing you, was he not?
A. Not exactly.
Q. Pretty nearly?
A. Nearly; Mr. Morton was facing west, and I was facing nearly east.
42 Q. When he turned to pass the money to Mr. Harrison, that would bring him more towards you than he was before?
A. Yes, sir; it did. That is, it brought the line of his arm more towards me.
Q. So that you could not see him when he was counting the money?
A. I saw himself, but I couldn't see on top of the desk.
Q. What did you see him doing there with the money?
A. I didn't see him doing anything with any money.
Q. Did you not say just now that you could not see him when he

was counting out the money, but you could see it afterwards when he passed it to Harrison?

A. I did not say I couldn't see him. I did not see the money lying on the desk, if he was counting the money, which I supposed he was.

Q. How could you suppose he was if you did not see?

A. For the simple reason, that immediately upon finishing his account he turned around, and passed——

Q. (Interposing.) You said just now that you did not know he was counting it.

A. I don't see how you can make that out.

Q. Did you not say that?

A. Didn't I just say that I heard him say, "5, 10, 11, 12, 13, 14, 15"?

Q. You heard him say that to himself?

A. No, sir.

Q. To whom did he say it?

A. He said it to himself.

Q. Did you not just now say that he did not say it to himself?

A. Well, you are trying——

Q. Did you not just that minute say that he did not count it to himself?

A. I can tell you, Judge, exactly by your desk there, how the whole affair transpired.

Q. Go ahead and do it?

(The witness went up near the judge's seat and illustrated his answer.)

A. The roll-top desk was like that, and I was sitting at the desk, and I was looking over and reading the contract the second time; the safe would be directly behind you, Judge, and one table was here.

Q. To your left?

A. To my left, and Harrison sat there.

Q. Between the table and the safe?

A. Between the table and the safe. While I was reading
43 and going over the contract, I heard Morton say, "5, 10, 11, 12, 13, 14, 15." As he turned around, as you see there, you facing that way, I couldn't help seeing it.

Q. Then you told us that you heard him while he was sitting at his desk?

A. Counting.

Q. Counting the money?

A. Counting the money, I suppose.

Q. And you saw that money?

A. I didn't see it until he passed it.

Q. But you heard him count at his desk?

A. At his desk.

Q. Before this receipt was signed by Mr. Harrison, you say Mr. Harrison asked Mr. Morton for money?

A. Yes, sir; they were talking about money.

Q. And Mr. Morton said he hadn't it, did he?

A. Something of that kind; I couldn't describe exactly what it was.

Q. You have testified what it was. Please state it again.

A. I think, as near as I can recollect, he said he hadn't it, or couldn't afford it, or something of that kind.

— ——?

A. I couldn't say; it was one or the other.

Q. You cannot say whether he said he had not the money, or could not afford it; is that right?

A. I think that is it; he said something of that kind.

Q. Then you are not certain what he said?

A. I am not positive; but that is the tenor of the conversation as near as I could make out.

Q. I want to understand whether you mean to say that he said he had not the money, and to say that he could not afford it are the same things. Do you mean to say that?

A. Yes, I suppose so.

Q. Therefore you say that you cannot tell us which he said, but it was one or the other, or something to that effect?

A. I will tell you what he said. It has come to me now. He said that it was not time for to pay any money. That is what he said.

Q. Not that he had not the money, but it was not time for him to pay it?

A. That also. That is right. I am right now.

Q. What did he say, then?

A. He said he couldn't afford it, and that he didn't have the money, and also that it was not time for him to pay it.

Q. He said all three of those things?

44 A. Yes, sir; it all comes to me now. The money was not due, and the time hadn't come for him to pay the money.

Q. What did Harrison say to that?

A. I believe Harrison said he had to have some money. I think that is what he said—he would have to get some money, or something of the kind.

Q. Did he say what for?

A. No, sir.

Q. And that is all he said?

A. That is all I know; that is all I can remember.

Q. After having said that, the next thing you heard was his counting the money at the desk?

A. And that must have been five or ten minutes afterwards; they were still talking together, I don't know about what.

Q. And you were sitting close to them, you have told us?

A. Yes, sir.

Q. At the time he was counting the money, you say you had already read the contract once?

A. Yes, sir; we had read it together.

Q. Before he began counting the money?

A. Before there was any money counted, or before Mr. Morton said he couldn't afford it, or didn't have it.

Q. Therefore the contract had been read by you before that money conversation came up?

A. Yes, sir.

Q. You did not consider it any part of your business, then, to see how much money was paid?

A. Certainly not. Mr. Morton was there, and Mr. Harrison was there. Mr. Morton asked me to witness Mr. Harrison's signature, which I did.

Q. You cannot say where Mr. Morton got the money?

A. No, I couldn't say.

Q. If he had gone to his safe——

A. (Interposing.) I would have seen that.

Q. Then he didn't get up from his desk after Harrison asked him for the money, until he began to count, did he?

A. No, sir.

Q. He never got up from his desk at all until he had passed the money over to Harrison, did he, because you say he turned around in his chair?

A. No, sir.

Q. You have said you were asked to witness this contract of the 8th of December?

A. Yes, sir.

Q. This was on the 22nd of December that you were there?

45 A. The 22nd of December.

Q. And you said you were asked by Mr. Morton to do it?

A. Yes, sir.

Q. That you swear to, do you?

A. Yes, sir; I do swear to that.

Q. You were not asked by Mr. Harrison?

A. No, sir.

Q. It was Morton?

A. Morton asked me to do it.

Redirect examination.

(Mr. POE:)

Q. Do you remember any reason Mr. Morton gave you for having your signature, as well as that of Carey Cole's at that time? Did he ask you to sign the contract as a witness?

A. He said he had only one signature, and he would like to have mine to it also.

Q. Are these the two endorsements that you speak of on the contract? (Showing witness endorsements on the contract offered in evidence.)

A. Yes, sir; these are the two—$1,500; that is my signature.

Q. Whose is the other?

A. Walter H. Harrison's.

Q. Did you see him write that?

A. Yes, sir.

Q. And on that other paper, too?

A. Yes, sir.

Q. Did you have any conversation at that time with Mr. M ton about being engaged as manager of this new concern to formed?

A. Yes, sir.

Q. What did Mr. Morton say to you?

A. Morton said he wanted me to be the manager, and to take c of all the outside business.

Q. Manager of what?

A. Of putting out the keg machines, and attending to the outsi business; that he would attend to the clerical part in the city; t it wasn't necessary to have a large clerical force; and he thoug as we had been working together in the Campbell Barrel Machi Co., two of us alone could handle the business ourselves, and k down expenses.

Q. Did he mention the name of the company?

A. Yes, sir.

Q. What did he say?

A. I saw there a subscription list for subscribers; I think it w a typewritten copy, in which it was stated to be called t

46 Franklin J. Morton Mfg. Co. Mr. Morton read it over, a he said he didn't like to have his name so prominent bef the public as that, and he thought he would place another name it in place of that.

Q. Did he mention the name?

A. Yes, sir.

Q. What was it?

A. He said he thought "Eureka" would look better, and he hi self scratched out "Franklin J. Morton" and wrote "Eureka."

Q. (Exhibiting paper to witness.) Look at this paper which now show you, and state if this is the paper to which you have j referred as the subscription list, with the name changed.

This agreement, made this — day of ——, by Franklin J. M ton, of Baltimore city, of the first part, hereinafter called Mort and Eureka Manufacturing Company of Baltimore City, here after called Eureka Company, of the second part, witnesseth follows:

First. Said Morton hereby agrees to sell, transfer and assign said Eureka Company all his right, title and interest in the lett patent issued to him by the United States, for a certain "barrel a keg machine," said letters patent being dated the — day of — 1894, and numbered —, the interest of said Morton therein, bei and absolute and entire interest thereto, upon the following ter viz:

One hundred thousand dollars in cash upon the *the* delivery said Morton to said Eureka Company of a good and sufficient signment of said letters patent; also an assignment and transfer said Morton by said Eureka Company of two hundred thousa full-paid and non-assessable shares of the capital stock of said Eure

Company; also an agreement in writing, duly executed by said Eureka Company to said Morton, stipulating that it will pay said Morton forty per cent. of the gross royalties that may be received upon any and all sales of barrels and kegs manufactured and sold under said hereinbefore referred to letters patent.

Second. Said Eureka Company hereby agrees to purchase said letters patent and to accept such assignment and transfer from said Morton of his interest therein, and to pay for such purchase, transfer and assignment as hereinbefore stipulated.

Third. Said Eureka Company hereby further agrees, that its capital stock of five hundred thousand dollars shall not be increased without the consent of said Morton.

Witness the hand and seal of the said Franklin J. Morton and the signature of —— ——, the president of said Eureka Manufacturing Company of Baltimore City, with the corporate seal thereof hereto annexed.

—— ——. [SEAL.]
—— ——. [SEAL.]

A. Yes, sir; that is the paper.

Q. Look on the other side.

A. That is the paper.

47 Q. Did he show you that paper?

A. Yes, sir. (Paper shown to the court.)

Q. He said he did not like to be so prominent, and he showed you that paper with "Morton" struck out and "Eureka" put in?

A. Mr. Morton struck it out himself, I believe.

Q. Do you remember whether you saw him strike it out, or whether he showed it to you stricken out?

A. Right there at the desk.

Q. Did this occur on the 22nd of December, when you signed that paper?

A. Yes, sir.

Q. How long were you there?

A. About an hour or an hour and a half.

Q. Did I understand you to say that you left the room where Mr. Morton and Mr. Harrison were talking, and went into another room during part of that time?

A. I got up and went out while they were talking, for I thought it might aid them in their consultation.

Q. Leaving them together?

A. I left Mr. Harrison and Mr. Morton together, and I waited for them in the other room.

Q. Of course you do not know what occurred between them in that room while you were out?

A. No, sir; I don't.

Recross-examination.

(Mr. CARTER:)

Q. On this day that you are speaking of, the 22nd of December, 1894, when you witnessed this payment of money, and signed your

name as an additional witness to this contract, did you and Mr. Harrison take this paper there with you?

A. I had nothing at all to do with it; I don't know anything about it. It was produced while I was there.

Q. Who produced it?

A. I don't know. The first I saw of it was in Mr. Morton's hands.

Q. You and Harrison went there together?

A. Yes, sir.

Q. You did not see it in Harrison's hands when you went there?

A. No, sir.

Q. You did not see it in Harrison's hands that day?

A. I saw it afterwards; after it had been altered.

Q. Before it had been altered, did you see it in Harrison's hands that day?

A. No, sir; in fact, I never saw it before that.

48 Q. You never saw it before that, until you saw it at his office?

A. No, sir; in fact, I didn't know anything about that business until I got there.

Q. What did he say about striking out the name of the "Franklin J. Morton & Co."?

A. He thought it would be too prominent; he did not want to have his name so prominent.

Q. Then he had not put it there in the first instance, I suppose, had he?

A. I don't know. I give you the matter as I found it there.

Q. You saw him erase the words, "Franklin J. Morton," and put in "Eureka"?

A. I am not entirely positive of that, but I think I did; I wouldn't swear to it, but I think I did.

Q. Somebody did that day?

A. Yes, sir; and I think he did; I wouldn't swear to it.

Q. You say that somebody certainly did it that day?

A. Yes, sir; it was done that day.

Q. And it was done, you say, because Mr. Morton said that day that he did not want his name to be so prominent; is that right?

A. That is right.

Q. You say also that on that day Mr. Morton spoke of letting you do the outside management of this business?

A. Yes, sir; of engaging me for that purpose.

Q. It was proposed to form a company to work this patent device, was it?

A. I don't know; the contract states it.

Q. You do not know it?

A. I say the contract states it.

Q. That is not my question. You do not know it, you say?

A. I know the contract states it, that it was proposed to form a company.

Q. Will you tell the court that you had no knowledge of that except from the reading of the contract?

A. That is all I could have.

Q. Do you tell the court that you had no other knowledge?

A. I couldn't have any other; I wasn't there when any of the terms were made, and I know nothing about the arrangement between Morton and Harrison.

Q. Do you tell the court that prior to the date of this contract you had not talked over with Mr. Harrison and Mr. Morton the scheme of the formation of a company to work this patent device of yours for you?

A. Yes, positively; I never said a word to Mr. Morton or
49 to Mr. Harrison about forming a company prior to the 8th of December. I had sold out all interest; I had no interest whatever.

Q. But you were to be interested in the company, were you not?

A. I knew nothing about that until Morton put the question to me himself on the 22nd day of December.

Q. And asked you whether you would manage it?

A. Well, in the course of our conversation he told me he wanted me to take charge of the outside business, and do all the placing of machines.

Q. Do you tell the judge now, that before the 22nd of December you had never talked over with Morton the formation of a company to work this device which you had invented, in which company it had been contemplated that you were to have stock?

A. I would tell the judge I don't know about having any stock in the company; I had no interest in the company; my rights in the company were all sold, and the first intimation I had of having anything to do with the company was on the 22nd of December, at that meeting. That is what I tell the judge.

Q. Do you tell the judge that until Mr. Morton, on the 22nd of December, said he would like you to have the management of the outside business of this company that was to be formed, you had never talked with him about the formation of a company to work this device?

A. Yes, sir; that is what I tell the judge.

Q. And you had never talked with him about your having an interest in that company?

A. No, sir.

Q. That is distinct?

A. That is distinct.

Q. You say that the reason Mr. Morton came to you and asked you to sign this contract executed on the 8th of December, as a witness to it, was that he said he had one witness, but he wanted a second witness. That is what you said, did you not?

A. No. I said that he had one witness and he wanted another one.

Q. Did you not tell the judge, in answer to Mr. Poe's question, that that was the reason Morton gave for asking you to witness it?

A. He made that remark, I say, that there was only one signature, and he wanted mine.

Q. Then does it not come to this, that you say that the reason

Mr. Morton gave you for asking you to sign as a witness was that there was but one signature of a witness?

A. I don't know what his reason was; that is what he asked me.

Q. That was your answer to Mr. Poe's question just now when he asked you whether Mr. Morton gave you any reason for asking you to be a witness. Did you not say that the reason he gave was that there was but one witness, and he wanted a second?

A. I say that yet; I have said that all along.

Q. Was not the name of the witness on it before you signed that of Mr. Carey Cole, a gentleman who is a clerk in Mr. Morton's office?

A. Yes, sir.

Q. Then Mr. Morton had as a witness to this contract his own clerk, and it was he who asked you to sign it as a witness that day, the 22nd of December, and not Harrison, with whom you had gone there?

A. Yes, sir; that is right.

Q. You said you had parted with all your interest in this device to Mr. Harrison?

A. Yes, sir.

Q. Then you were not to have any interest in the company that was to be formed to work it?

A. Only as manager.

Q. But you were to have no interest in it as a stockholder?

A. Not in the least.

Q. You had parted absolutely with all your interest to Mr. Harrison?

A. Yes, sir.

Q. What had he given you?

A. I think that is a matter of my own.

Q. I asked the question.

A. Judge, am I compelled to answer?

COURT: Answer the question.

A. I received altogether about $1,300.

Q. For this interest that was mentioned to be sold to Mr. Morton for $100,000, $200,000 of stock of the company, and 40 % of all the royalties?

A. I don't know. When I sold to Mr. Harrison, the machine was not built; that application was just made for the patent, and that it was really on paper.

Q. Where was it, except on paper, on the 8th day of December, 1894?

A. The patent was applied for, and the machine was built, and had been operated.

Q. The patent had been applied for when you sold it to Harrison, as you said just now?

A. Yes, sir.

Q. Then, so far as the patent having been applied for was concerned, it was in no better condition when Harrison sold to Morton than it was when you sold to Harrison?

A. That is right.

51 Q. Then that one reason for a difference amounts to no difference at all, because it is the same thing. Now, you say that when you sold to Harrison the machine had not been built?

A. Wasn't built.

Q. This device was described in your application for a patent, of course?

A. Yes, sir.

Q. You had built a model of it, had you?

A. No, sir; it was not finished.

Q. But at the time you sold to Harrison?

A. The machine was being built at that time.

Q. Did you file a model in the Patent Office with your application for a patent?

A. No, sir.

Q. The machine was being built where?

A. Here in Baltimore.

Q. It was nothing but a machine to embody the device, was it?

A. Sir?

Q. It was a machine you were building to embody the device?

A. Yes, sir.

Q. When you sold to Harrison that machine was being built?

A. Yes, sir.

Q. When he sold to Morton, that machine to embody the device had been finished, had it?

A. A model had been finished and was working.

Q. Working where?

A. At 205 Courtland street.

Q. At whose office?

A. At Mr. Harrison's office.

Q. So that, when you sold to Harrison, the only difference in the condition of things between that time and the time that Harrison sold to Morton, is that you had put up one machine in Harrison's office to illustrate the patent; is that right?

A. I exhibited it to Morton and several other gentlemen that Harrison brought there.

Q. But you had to have up one machine to exhibit your device?

A. That is right.

Q. It had not gone into use anywhere?

A. No, sir.

Q. Therefore it was not a thing that was in operation in the manufacture of barrels; it was simply put up in Harrison's office to show what the model was?

A. In a working machine—that is right.

52 Q. Anybody who was accustomed to things of that kind by reading your description in the application could have understood what kind of a machine it would be, could he not?

A. Certainly.

Q. Then if anybody read your application, he would not need any further knowledge of the machine itself?

A. No, sir.

Q. If he wanted any further knowledge, you could give it, could you not?

A. I could.

Q. And you did give it to Mr. Harrison when you sold it to him?

A. Of course I gave it to him; that is, I gave him the claim made in the application for a patent; I gave him a copy of the patent claims when I assigned it.

Q. Therefore, Mr. Morton had in this paper assignment a full description of the machine, and anybody who understood mechanics could understand it just as well as by looking at the machine, could he not?

A. Yes, sir.

Q. When did you assign it to Harrison?

A. I think during the month of September.

Q. September?

A. I think so, because I can remember I made the first assignment in September.

Q. You assigned a one-half interest to Harrison in September?

A. Either in August or September, I am not positive.

Q. You did not assign the whole interest until the 26th of November, did you?

A. About that time.

Q. And then you got $1,300?

A. I got that at different times; I got that in different quantities, not all at once. I got altogether about $1,300.

Q. Had you received all that $1,300 before you assigned him the whole interest on the 26th of November?

A. Yes, sir.

Q. Then you must have given him a half interest in September?

A. In September he was to have a half interest for placing it.

Q. When you gave him the whole interest it was the 26th of November?

A. Yes, sir.

Q. And he had then paid you the $1,300?

A. Altogether, yes.

53 Q. The 26th of November was only twelve days before the 8th of December. Now, what was there different in the condition of things between the 26th of November and the 8th of December as to this machine, in those twelve days?

A. Twelve days?

Q. Yes, the time you assigned your whole interest and the time when you assigned the half interest.

A. The machine was finished.

Q. When was it finished?

A. Along about the middle of November, or the first, somewhere along there.

Q. Then it was finished before you assigned him the remainder of your interest, was it not?

A. Yes, sir.

Q. So that, when you had assigned him the whole interest, the other half the machine had been finished?

A. Yes, sir.

Q. And therefore everything was in the same condition in which it was when Harrison sold it to Morton for $100,000, as you say, by this contract?

A. Yes, sir.

Q. How did he pay you the $1,300?

A. In different amounts.

Q. How, though; in money?

A. In money, cash, yes.

Q. Did you give him receipts for it?

A. For some of them, yes.

Q. Not all?

A. No, I don't think I did, all of them.

Q. Then how do you know that it aggregated $1,300?

A. I kept a memorandum myself—didn't exactly keep a memorandum, but I know when I went home I was hard up, therefore that was what was the matter, and I wanted some money; said I, "You give me $100, and you can take the whole of it."

Q. Give you another $100.00?

A. Yes, sir.

Q. Was that before you assigned him your last half interest that you were hard up, and told him to give you another $100, and he could take that half interest?

A. No, the whole of it.

Q. He already had a half?

A. Yes, sir.

Q. So that you really sold him the half interest for $100?

A. I really sold him the whole thing for $1,300.

54 Q. But you said he had paid you from time to time certain amounts of money?

A. Yes.

Q. And then, before you assigned him the second half interest, you said to him, "Now, if you will give me $100 you can have the whole thing." Did you not say that?

A. That's right.

Q. You know the Campbell Barrel Co.?

A. I know it too well. Yes, sir, I know it too well.

Q. That Campbell Barrel Co. had made over to it by you certain patents for making barrel machines?

A. Yes, sir; that is right. To my sorrow, I did.

Mr. CARTER: There is one further question as to what took place on the 22nd of December that we omitted to ask Mr. Campbell. We would like to recall him for that purpose.

HENRY CAMPBELL, recalled for further cross-examination.

(Mr. CARTER:)

Q. You went to the office of Mr. Morton, as you have testified, in company with Mr. Harrison, on the 22nd of December?

A. Yes, sir.

Q. And you went into the inner office?
A. Yes, sir.
Q. You went in together, you have said. Did Mr. Harrison carry any paper with him that day?
A. Not that I know of.
Q. Did he exhibit and hand to Mr. Morton any paper that day?
A. Not that I know of.
Q. Had you assigned to Mr. Harrison a few days before this a claim that you professed to have against Samuel G. B. Cook?

Mr. POE: I hardly think this is cross-examination.
COURT: I think the question is admissible; I think I see what it is leading up to.

Q. A few days before this, had you made an assignment to Mr. Harrison of a claim that you professed to have?
A. That I did have. I didn't profess to have it; I had it; a *bona fide* claim for 300 pounds.
Q. Which had not been settled between you and Mr. Cook?
A. No, sir; absolutely not.
Q. For three hundred pounds?
A. Yes, sir.
Q. And you had assigned that claim to Mr. Harrison?
A. Yes, sir.
Q. When had you assigned it?
A. I don't exactly remember the date.
55 Q. Not long before this visit, was it?
—. ——.

Q. Now, you say you not only profess to have that claim for three hundred pounds, but you had it; that Mr. Cook owed you three hundred pounds.
A. That is what I wish to say; that he actually owed me 300 pounds under contract.
Q. You assigned that claim to Mr. Harrison, you have said?
A. Yes, sir.
Q. What did he pay you for it?

Mr. POE: We object. They cannot go into an examination of a written assignment. An assignment of a chose in action must be in writing.

Q. (Handing papers to witness.) Be kind enough to look at those papers and at the signature purporting to be yours. Those are the documents to which you refer, are they, Mr. Campbell?
A. Yes, sir; part of them.

(Here insert the £300 draft on S. G. B. Cook.)

BALTIMORE, *December 13th*, 1894.

To Samuel G. B. Cook:

Pay to Walter H. Harrison or order, the sum of three hundred (£300) pounds or the equivalent thereof in current money of the United States, being the amount due me under the terms of our

contract, made in London, Eng., on the 23rd day of January, 1891, by you, and this shall be your receipt for same.

HENRY CAMPBELL.

Witness- by—
T. E. McCREADY.
J. J. FENTON.

I hereby assign to Franklin J. Morton all my right, title, and interest.

W. H. HARRISON.

Whereas, an agreement was entered into between Henry Campbell, engineer, of No. 115 Cannon St., London, E. C., England, of the first part, and Samuel George Baker Cook, of 114 Commerce St., Baltimore, Maryland, U. S. A., but at the time of the date of said agreement, temp-rarily of 27 Eagle Wharf road, London, Eng. (said agreement being of the 23rd day of January, 1891), by which the said Cook, the party of the second part thereto, agreed to pay to said Campbell, the party of the first part thereto, the sum of £800 0s. 0d. for and in consideration of the assignment by said Campbell to said Cook of certain valuable interest, at that time solely possessed by said Campbell, which, with the conditions attendant thereto, will be found set forth in the above-referred-to agreement; and whereas, of the sum of £800 0 0 the said Cook has paid to the said Campbell £500 0 0 in money and stock, viz:

January 23d, 1891, cash, £100 0 0.

Stock of Bottle Seal Co., of Great Britain, £150 0 0.

56 August 4, 1891, due, but payment delayed, cash £250 0 0, leaving still due, overdue and unpaid the full sum of £300 0 0, cash, by said Cook, to said Campbell.

And whereas, said Campbell is desirous of disposing of all of his right, title and interest in and to the agreement of January 23d, 1891, made in London, England, between Cook and Campbell as aforesaid; now, therefore, the said Henry Campbell, being now and for three years past a resident of the city of Baltimore and State of Maryland, for and in consideration of the sum of one dollar to him in hand paid, the receipt of which is hereby acknowledged, as well as for other good and valuable considerations, hereby assigns, transfers and conveys unto Walter H. Harrison, of Baltimore city and State of Maryland, his heirs or assigns, all his right, title and interest in and to the conditions, purposes and interests and properties of every kind now vested in him by the agreement between Cook and Campbell, above referred to, and specially to the amount of £300 0 0 cash, owing to Campbell by said Cook as therein expressed.

Witness the hand and seal of the said Henry Campbell, this 13th day of December, 1894.

Test: HENRY CAMPBELL. [SEAL.]

T. E. McCREADY.

For value received, I hereby assign the above contracts, with all my rights, title and interests in same.

W. H. HARRISON.

Q. What do you mean by "part of them"?

A. That is not the document I turned over to Mr. Harrison. It does not seem to me to be the contract I turned over to Mr. Harrison; it does not seem to be all of it.

Q. Be kind enough to look at your signature.

A. That is my signature.

Q. This is a recital by you?

A. A recital of part of a contract between Samuel G. B. Cook and myself.

Mr. WHYTE: But not that contract between you and Cook?

A. Not the whole of the contract.

(Mr. CARTER:)

Q. You mean you turned over something else to Harrison besides this in that case?

A. This does not give all the terms of the contract.

Q. Did you ever turn over to Harrison anything else than this?

A. Yes, sir; I turned over to him the stock.

Q. Stock in what?

A. In the box machinery company. That is a long story to that when you come to it—some more of Samuel G. B. Cook in it and Mr. Morton. If you are going into this business, I would like to ventilate the whole thing. You say I am a swindler. I will show you who has been swindled, that's all.

57 Q. You did not see this paper carried down that day?

A. No, sir; I don't remember it; I wouldn't swear to it; I don't remember seeing that paper.

Q. You have said that there was no paper so far as you know carried down by Mr. Harrison in company with you when you went in to see Mr. Morton?

A. I say so now.

Q. Therefore, if this paper was carried down that day, after that, to Mr. Morton, you did not see it?

A. No, I don't think I did; I don't remember it. If I remembered it I would say so.

Q. That is not the question we are discussing. You have just now said that you saw no paper given on that day by Mr. Harrison to Mr. Morton, that he took none in with him so far as you saw?

A. No, sir; not that I know of.

Q. You saw no paper given to Mr. Morton by Mr. Harrison on that day at all, did you, whether he took it in with him or otherwise?

A. I saw Mr. Harrison hand back that subscription list.

Q. Hand it back to whom?

A. To Mr. Morton. Morton gave it to Harrison, and Harrison read it over and made a remark.

Q. Did you not say on the stand just now that you did not know who produced that subscription list with the name "Eureka" substituted for "Morton"?

A. When I say I don't know who produced it, I don't know who made it; I don't know who wrote it.

Q. Let me get at it this way: Did you not say in answer to my question as to that paper being the subscription list on which the name of Franklin J. Morton was erased and "Eureka" was substituted therefor, that you did not know who produced that paper on that day?

A. I would like to have the shorthand writer go back there and see.

Q. No; I want your recollection of what you said.

A. If I said that, I mean that I don't know who got the paper up.

Q. Who carried it to the room then that day?

A. I don't know, sir.

Q. In whose possession did you first see it on that day?

A. In Mr. Morton's.

Q. And you saw him hand it to Mr. Harrison, did you?

A. Yes, sir.

Q. That is the first you saw of that paper, then, when Mr. Morton handed it to Mr. Harrison?

A. Yes, sir; that is right.

58 Q. That is what you say now?

A. That is right.

Q. You say that after Mr. Morton handed that paper to Mr. Harrison, Harrison returned it to Morton?

A. Yes, sir.

Q. Now, I am excluding that subscription paper from your mind entirely; exclude from your mind also the contracts that were taken out of the safe and exhibited, and which you were asked to witness. Excluding those papers entirely from your mind so as to keep my question clear, do you say that Mr. Harrison delivered no other papers, to your knowledge, to Mr. Morton, on that day?

A. Yes, sir.

Q. Then you did not see this Cook paper at all in Mr. Harrison's hands that day?

A. Not that I recollect.

Q. Did you not say just now that you saw no paper delivered by Harrison to Morton on that day, except the subscription list?

A. That is right.

Q. Then, if you saw no paper delivered by Harrison to Morton on that day, you could not have seen this one, could you?

A. Certainly not. I say now, I don't remember seeing that paper; I don't remember ever seeing it before until now.

Q. But you say positively that Mr. Morton did not give it to Mr. Harrison on that day?

A. That?

Q. Yes.

A. I don't know anything about it.

Q. Do you say now positively that Mr. Harrison did not give that paper to Mr. Morton in your presence?

A. No, sir; not in my presence that I know of. I didn't see him. There is nothing more positive than that.

Q. Did you see this Cook paper in Harrison's possession that day?

A. On the 22nd.

Q. Yes.

A. No, sir; I never saw that paper from the time I delivered to him (Harrison) until I see it now.

Q. Then, if Harrison, when he went into the room which he did with you——

A. Yes, sir.

Q. He entered that office of Mr. Morton in your company—if he handed this paper to Morton, you did not see him do it?

A. No, sir.

Q. I asked you awhile ago this question in substance: Whether you had, a few days before the time that you went to Mr.
59 Morton's office with Mr. Harrison on the 22nd of December, made an assignment of a claim that you professed to have against Cook. Your answer was, "Not only a claim that I professed, but that I had a *bona fide* claim." Will you be kind enough to look at that paper I now show you, and say whether that is your signature?

(The witness took some time to read the paper.)

Q. The only question is whether that is your signature.

A. Yes, sir; that is my signature. I see it now. Your honor, can I take the date of that?

Mr. POE: Yes, take the date.

Mr. GANS: I will read it to you: "Feb. 4th, 1892."

WITNESS: What is the amount?

Mr. GANS: $1,158, being the equivalent of 23 pounds, 3 shillings.

WITNESS: That made the payments up to that date.

(Here insert paper, February 4th, 1892.)

Received February 4th, 1892, of Sam'l G. B. Cook, eleven hundred and fifty-eight dollars cash, the same being equal to £238 3 0, the entire amount due and payable to me under the agreements with said Cook, dated December 20th, 1890, and January 23, 1891, which is in full settlement, satisfaction and demand for all claims under the said agreement.

Witness my hand and seal, the day and date above mentioned.

(Signed) HENRY CAMPBELL. [SEAL.]

Witness:

GRAFFLIN COOK.

After recess.

HENRY CAMPBELL, resumed.

(Mr. POE:)

Q. Now, Mr. Campbell, you have had exhibited to you an order signed by you on Samuel G. B. Cook, dated December 13th, 1894, and appended to it an assignment of the same date, signed by you

and witnessed by Thomas E. McReady. You have also had exhibited to you a paper signed by you and witnessed by Grafflin Cook, and dated February 4th, 1892. Have you any statement that you desire to make to the court, with reference to this receipt of February 4th, 1892? If so, you can make it now.

A. Well, I will like to make this statement. I entered into the contract with Mr. Samuel G. B. Cook, in London, for certain patents for box machinery and wire-nail-making machinery, and this relates to the box machinery contract.

(Mr. GANS:)

Q. The date is there, isn't it?

A. Yes, sir; the date is there.

Q. Isn't it January, 1891?

Mr. POE: What was the date, Mr. Campbell, did you say?

60 A. One minute, if you please; January 23rd, 1891.

Mr. GANS: Do not let him speak of any written paper, Mr. Poe, without producing it.

Mr. POE: I do not intend that he shall, and he has already answered.

Mr. CARTER: That is the paper that we have offered.

WITNESS: That is my paper.

Mr. POE: Your receipt refers to a contract of January 23rd, 1891.

Mr. CARTER: Two contracts.

Mr. POE: December 20th, 1890, and January 23rd, 1891. I speak from memory now. Have I my dates right?

Mr. GANS: Now he has another paper in his hand.

Mr. POE: I asked him if he had any statement to make with regard to that receipt of February 4th, 1892; if he did, now he has the opportunity to make it. I heard no objection——

Mr. GANS: He has a paper in his hand which he has not yet produced, and I think we ought to see it before you go along.

WITNESS: You can look at it.

Mr. POE: I do not want to go into any unnecessary detail. You have had that receipt exhibited to you, and I asked you if you wished to make any statement or explanation to the court in regard to it?

Mr. CARTER: Now, he was going on, and in making that statement he referred to another written statement that we have not seen, and Mr. Gans does not think he ought to speak of it unless it is produced.

Mr. POE: Precisely.

Mr. WHYTE: Do not refer to it unless you are going to produce it.

(Paper handed defendant's counsel.)

Mr. POE: Now, Mr. Campbell, make your statement to the court?

A. My statement to the court is this: When I got that receipt——

Mr. CARTER: That is February 4th, 1892.

A. February 4th, 1892, the moneys that were due on that receipt at that time, were 250 pounds, according to this contract that I have here, and I was compelled by writing a lawyer's letter to Mr. Cook

to get my money; and this receipt at that time was supposed to cover the payments up to that date, as the next payment would be 12 months thereafter, which was the 300 pounds.

Q. It was a receipt then for what was due under the contract up to that date?

A. It was a receipt for what was due under the contract up to that date.

Q. And did not include this 300 pounds that you subsequently assigned to Mr. Harrison?

61 A. Certainly not.

Q. Is that your explanation?

A. Certainly not; yes, sir; and it was under a contract.

Q. Sir?

A. And it was payments due under a contract for box machinery for placing metal clamps on boxes.

WITNESS (to Mr. Poe): Do you want this paper?

Mr. GANS: No, let us see this first; I want to ask some questions about it.

Mr. WHYTE: That is all, gentlemen.

Cross-examination.

(Mr. GANS:)

Q. Now, Mr. Campbell, this agreement that the court has not yet seen, between you and Mr. Samuel George Baker Cook, is dated the 23rd day of January, 1891?

A. Yes, sir.

Q. The effect of this agreement is to transfer to Mr. Samuel George Baker Cook $\frac{6}{10}$ of certain clamp patents, that is to say, patents for angle clamps for uniting the corners of card-board and other boxes?

A. Yes, sir.

Q. In the United Kingdom and Ireland, and the isle of Man, and in the United States and Canada. That is true, isn't it?

A. Yes, sir.

Q. Now the terms of that agreement made on the 23rd of January, 1891, are that he shall pay therefor 800 pounds?

A. Yes, sir.

Q. That is, that Cook shall pay to you 800 pounds?

A. Yes, sir.

Q. 100 pounds in cash.

A. Yes, sir.

Q. Now let me see this paper, please, Mr. Poe. And in this paper it contains a recital of what has been paid, I find here; what we have called the Cook paper, which was signed by you, contains the assignment to Harrison of this claim against Cook. You recite that 800 pounds was the consideration, and "whereas of the sum of 800 pounds, the said Cook has paid to the said Campbell 500 pounds in money and stock, to wit, January 23rd, 1891, cash 100 pounds," so you got the first payment of 100 pounds cash?

A. Yes, sir.

Q. The agreement is on the 23rd of January, 1891, and you got

the cash on that day, 100 pounds. Then the agreement goes on to say, "150 pounds of full paid-up shares in the Bottle Seal Company, Limited?

A. Yes, sir.

62 Q. On the assignment to the second party or his assigns, that is Cook?

A. Yes, sir.

Q. "Of $\frac{6}{10}$ undivided interest in these letters patent?"

A. Yes, sir.

Q. Now, in this paper you say you also received stock?

Mr. CARTER: In the Cook paper.

Mr. GANS: That you received stock in the Bottle Seal Company of Great Britain of 150 pounds?

A. Yes, sir, in stock; yes, sir. In cash nothing.

Q. I understand there are 100 pounds cash and 150 pounds in the stock of the company; that makes 250 pounds out of the 800?

A. Yes, sir.

Q. Then this agreement goes on to say, "January 23, 1891, 250 pounds in six months from the date of incorporation in Baltimore, Md., United States, America, of 'the box machinery company'"?

A. Yes, sir.

Q. Now, I find here in lead pencil there is a memorandum on this contract that that company was incorporated on the 4th of February, 1891?

A. Yes, sir.

Q. Is that right?

A. It was incorporated; right; yes, sir.

Q. And then six months from that was the 4th of August, 1891?

A. Yes, sir.

Q. And you have that here?

A. Yes, sir.

Q. I find two dates in pencil, February 4th, 1891, and August 4th, 1891, so that 250 pounds was due on the 4th of August, 1891?

A. Yes, sir.

Q. Now you have in this Cook paper the assignment to Harrison' August 4th, 1891, "due, but payment delayed, cash 250 pounds.', Then you got that money?

A. Yes, sir; I got it afterwards.

Q. That makes 500 pounds?

A. That follows the receipt; that is the receipt.

Q. Follow me, please; there are 250 pounds; that makes 500 pounds?

A. That is right.

Q. That 250 pounds was due on the 4th of August, 1891?

A. Yes, sir; but it was not paid then.

63 Q. I understand, that is what you say. And then the last 300 pounds is provided for in this way, "And as to the payment of 300 pounds in twelve months from the date of the incorporation of the above-described company." Now the company was incorporated on the 4th of February, 1891. Twelve months would be the 4th of February, 1892?

A. Yes, sir.

Q. So that the last 300 pounds was due on the 4th of February, 1892?

A. Yes, sir.

Q. Is not that the date of the receipt in full?

A. That is the date of the receipt in full, but not the date of the 300 pounds; it is the date of the 250 pounds, whereby I had to send him a letter from Lawyer Pollock to collect what I was to get, and he said he hadn't the money and couldn't get the money, and I still waited and waited, leaving the 300 pounds.

Q. Your explanation was, however, when you were asked by Mr. Poe to explain that this 300 pounds was not due at that time——

A. I didn't hardly mean that, but I knew it was due.

Q. You had the whole receipt, and you got these papers before the recess?

A. Yes, sir; I hadn't looked them over.

Q. And Mr. Poe asked you to explain it?

A. Yes, sir.

Q. And the explanation you gave was that the 300 pounds was not due at that time, before we commenced to examine you at all?

A. Of course, I was just speaking off-hand.

Q. And you want your whole examination on that question to be regarded by the court as simply off-hand?

A. No, I do not.

Q. As a matter of fact, the whole 800 pounds, and particularly this 300 pounds, was due on the 4th of February?

A. Yes, sir.

Q. It was due then?

A. Yes, sir.

Q. By the very terms of the agreement?

A. Yes, sir.

Q. Now, on the 4th of February, 1892, you sign a paper and seal it, in which you say, "Received, February 4th, 1892, of Samuel G. B. Cook, $1,158 cash, the same being equal to 283 pounds, 3 shillings, the entire amount due and payable to me under the agreements with said Cook, dated December 20th, 1890 (which you had not produced thus far), and January 23rd, 1891, which is in full settlement, satisfaction and demand for all claims under said agreement." Well, now, when you put your name and seal to a
64 paper which says you have received the entire amount in full settlement, satisfaction and demand of all claims, and we give that to you this morning, and then you were asked about that receipt, you explain it, the only explanation you can give, is that that 300 pounds was not due at that time; that was not true, was it? The 300 pounds was due at that time?

A. The 300 pounds was due, but had not been paid.

Q. Don't you acknowledge here that it was paid?

A. No, sir; I acknowledged that payment of a small balance due, which was the 250-pound payment.

Q. What do you mean by the entire amount due under the contract?

A. Up to that date.

Q. You mean this receipt then to read that when you say the entire amount due and payable to me under the agreements; wasn't it all due at that time?

A. Yes, sir.

Q. It was all due?

A. Yes, sir.

Q. So when you write a receipt under seal and admit to have received the entire amount due and payable to you under the agreement of everything which was payable under the agreement, which was due at that time, you mean the court to read this receipt, except 300 pounds; is that it?

A. Well, I have given my explanation of it.

Q. And this is the best explanation that you can give?

A. The explanation is at that time that that 250 pounds was due; it was overdue and had not been paid at the time, and I had to employ Lawyer Pollock to see the young man after that payment. I remember now distinctly, when I went to see him after that payment, which was made to me, he went out and got the money and paid me that 250 pounds, leaving the other part until Mr. Cook came over here, so when I signed that receipt it was with that understanding; I didn't look over it so carefully.

Q. Why, it is very short.

A. I know it is.

(Mr. CARTER:)

Q. And it is typewritten.

A. Typewritten, and my understanding was that that covered that 250-pound or the 500-pound payments due up to that date.

Q. Now, when you say this is in full settlement and satisfaction of all claims under the agreement——

A. Well.

Q. How can you possibly sign a paper like that, and particularly when all the money was due, and yet claim that 300 pounds was still owing to you?

A. Well, sir, that is my explanation of it.

Q. And that is the best explanation that you can give?

A. That is right.

65 Q. And did you pay as much attention to what took place on the 22nd of December in Mr. Morton's office as you did to this receipt?

A. Yes, sir; I think I paid greater attention.

Mr. GANS: That is all we want from you.

The plaintiff, further to maintain the issues on his part joined, called JOHN WATSON, JR., a competent witness, who testified that he is an attorney-at-law and patent attorney, and has been since June, 1892, and knows both plaintiff and defendant. He remembers having placed in his hands in December, 1894, certain papers pur-

porting to be assignments of a patent right from Harrison to Morton. "Some time in the month of November, 1894, Mr. Harrison brought to me an assignment of half an interest in the application for the patent, which is the subject-matter of this suit. At the start Mr. Harrison brought to me an assignment of half an interest in the application for the letters patent, which are the subject of this contract. This was dated September 11th, 1894, and it was recorded in the Patent Office. It was an assignment by the inventor, Henry Campbell, to Mr. Harrison. Mr. Harrison then requested me to prepare an assignment of another half interest, or, in other words, so as to place the whole patent in him, which assignment I prepared. This assignment recited the previous assignment of a half interest and conveyed the entire interest in the patent from Campbell, the inventor, to Mr. Harrison. It is dated 20th November, 1894. I delivered that assignment to Mr. Harrison. Here are copies of them which the plaintiff offers in evidence.

(Here insert the two assignments.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify, that the annexed is a true copy from the records of this office of an instrument of writing executed by Henry Campbell and Walter H. Harrison, September 11, 1894, and recorded in Liber U., 50, page 22.

Said record has been carefully compared with the original, and is a correct transcript of the whole thereof.

In testimony whereof, I, S. F. Fisher, acting Commissioner of Patents, have caused the seal of the Patent Office to (Seal's place.) be affixed this 9th day of November, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United — the one hundred and twentieth.

S. F. FISHER,
Acting Commissioner.

Liber U., 50, p. 22.

Whereas, Henry Campbell, of the State of California, now and for the last three years a resident of the city of Baltimore 66 and State of Maryland, has filed an application in the United States Patent Office, Department of the Interior, Washington, D. C., for letters patent, covering the invention of a machine for forming and making barrels and kegs, &c.; which application is of serial number 522,266, and is dated the sixth day of September, 1894; and

Whereas, it is the intention of the said Henry Campbell to apply for letters patent in the Dominion of Canada, and in the kingdom of Great Britain and Ireland, Sweden and Norway and Hungary, in the Empire of Germany, and Austria, and in the Republic of France, covering the invention of the above referred to machine for

the making and forming of barrels and kegs, &c., and the method or methods for making, setting and operating the same; and

Whereas, the said Henry Campbell is desirous of availing himself of the services of one Walter H. Harrison, of the city of Baltimore and State of Maryland, in the conduct and management of any and all business arising out of or attaching to the said patents, for which applications are now filed, or for which applications may hereafter be filed in the United States, and in each, either and all of the States, kingdoms or countries, as above recited, and desire to associate with himself the said Walter H. Harrison, as joint owner therein.

W. H. H. H. C. M. R. C. J. F. F.

Now, therefore, this agreement witnesseth, that the said Henry Campbell, the party of the first part hereto, for and in consideration of the sum of one dollar to him in hand paid by the said Walter H. Harrison, the party of the second part hereto, the receipt of which is hereby acknowledged, as well as for and on account of other good and valuable considerations, hereby grants, assigns and conveys to said Walter H. Harrison a full and equal interest with himself in the said above-described application for letters patent of the serial number and date as above recited, now pending in the United States Patent Office; and also of a full and equal interest with himself in any and all applications for patents, or for any and all patents that may hereafter be filed, issued or granted in the respective countries herein recited; and it is hereby understood and agreed, that the said Campbell and the said Harrison, from the date of these presents, shall be the owners of and have an equal proprietary interest in and to all applications for, and grants and issues of said patents in each and all of the countries and States above referred to, and of all and every interest created therein in their joint names; to the end that neither of said joint owners shall be authorized to dispose of any part of the joint interest hereby created, without the consent of the other.

As witness our hands and seals, this 11th day of September, 1894.

HENRY CAMPBELL. [SEAL.]
WALTER H. HARRISON. [SEAL.]

Test: I. J. BENTON.
JNO. M. PHELAN.

Recorded Sept. 17, 1894.

67 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify, that the annexed is a true copy from the records of this office of an instrument of writing executed by Henry Campbell, November 26, 1894, and recorded in Liber Z., 50, page 174.

Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

In testimony whereof, I, S. T. Fisher, acting Commissioner of

Patents, have caused the seal of the Patent Office to (Seal's place.) be affixed this 9th day of November, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and twentieth.

S. T. FISHER,
Acting Commissioner.

Liber Z 50, page 174. .

Whereas, Henry Campbell, formerly of the State of California, but now a resident of the city of Baltimore, State of Maryland, did, by an instrument of writing executed on the 11th day of September, 1894, and filed for record in the Patent Office in Washington, D. C., on the 17th day of September, 1894, as recorded in Liber U., 50, page 22, of Transfers of Patents in said office, sell and convey unto one Walter H. Harrison, of the city and State aforesaid, a full joint interest with himself to a certain application filed in the Patent Office of the United States, at Washington, D. C., which application is of serial number 522,266, and is dated the 6th day of September, 1894, as also in any and all applications for patents that may be hereafter filed, issued or granted in any or all of the respective countries in said instrument of writing set forth, and did bind himself mutually with said Harrison, that from and after the said 11th day of September, 1894, they shall be joint owners of and have an equal proprietary interest in the said application above recited as well as all applications for and grants and issues of said patents in all of the countries and States as therein recited, to the end that neither of the joint owners shall be authorized to dispose of any part of the joint interest thereby created without the consent of the other; and

Whereas, the said Henry Campbell is desirous of conveying to said Walter H. Harrison absolutely and irrevocably his joint interest in all of the above-recited interests, conditions and propositions, to the end that the sole proprietorship thereof, and the entire interest therein, shall be fully conveyed, free and untrammelled, to said Harrison; now, therefore, this deed witnesseth, that for and in consideration of the sum of one dollar and other valuable considerations (the consent of said Harrison being manifested hereto by his acceptance of this deed), I hereby assign, transfer and set over to Walter H. Harrison the entire right, title and interest in and to the 68 application for patent serial number 522,266 and the patent right contained therein and covered thereby, as well as all other the interests, agreements and conditions recited in the said instrument of writing dated the 11th day of September, 1894, and recorded in Liber U., 50, page 22, of the Transfers of Patents, in the United States Patent Office at Washington, D. C.; to which instrument of writing this deed is hereby made supplemental, as witness my hand and seal this 26th day of November, 1894.

HENRY CAMPBELL. [SEAL.]

(Recorded Nov. 27, 1894.)

Test: J. J. FENTON.
T. E. McCREADY.

These assignments were duly recorded in the office of the Commissioner of Patents. I was not a witness to that assignment. In December Mr. Harrison came to me and asked me to prepare an assignment of his entire interest in that patent to Mr. Franklin J. Morton, which I did. That is this assignment. This assignment was executed by Mr. Harrison in my presence, and I signed my name as a witness. The date of this assignment is the 8th day of December, 1894.

The witness was then shown a paper purporting to be an assignment, headed "Duplicate," dated 8th December, 1894, by Walter H. Harrison to Franklin J. Morton, purporting to be signed and sealed by Walter H. Harrison and attested by Carey Coale and John Watson, Jr., but not executed, and he was asked to state if he ever saw that paper before, and what he knew about it; to which he replied, "That paper was produced in my office; I think it was the 11th day of December, when Mr. Harrison and Mr. Morton were there together. It was produced on the 11th.

I do not know whether they came there together. I was out of my office when they arrived, and when I came in they were both there. This paper was produced, and it purported to be an assignment of the patent. I did not think it was in the exact form in which it should have been, and I told them it could not be recorded in the Patent Office without there were two witnesses. It had been executed prior to their coming there, and the name of Mr. Carey Cole appeared on it as the only witness. They then asked me, I cannot say which of them, but they were both there, and if one made the request the other acquiesced in it; I cannot say just how that occurred, but at any rate I was asked to sign as an additional witness in order to put the paper in such a form that it could be recorded in the Patent Office, and I so signed it. I drew an assignment to be substituted for that, to be replaced by that. Well, that paper is an executed paper, but not acknowledged. I told the gentlemen at the time that no acknowledgment was necessary for recording in the Patent Office; that all that was necessary was two witnesses, and it had but one witness. I drew this assignment. It is in accordance with the act of Congress and the rules of the Patent Office. I forwarded it to Washington at Mr. Harrison's request, with money for recording it, and accompanied by a letter in which
69 I asked the Commissioner of Patents to return or to forward the assignment, when recorded, to Mr. Franklin J. Morton. I cannot recollect all the conversation I had with Morton and Mr. Harrison on the 11th of December, 1894. I did not know who Mr. Franklin J. Morton was by name; it seems I had met him before, when I was in Judge Fisher's office, and we at once recognized each other upon meeting in my office. Subsequent to that interview I did regard myself as Mr. Morton's attorney in this connection, in connection with these patents; subsequent to the occasion when I met them in my office on the 11th of December, 1894.

We talked about various patent matters; other patents outside of this barrel machine patent, relating to a box-nailing machine and another nailing machine, and during the course of that conversa-

tion they spoke to one another of a contract which had been executed on the 8th day of December, and Mr. Morton stated in my presence that he had that contract in his possession for Mr. Harrison; that is, that he had both copies of that contract in his possession. He spoke of a contract between them that had been executed on the 8th day of December of the same year, 1894. He said he had both of these copies in his possession. I cannot remember the language, for this reason, that I had no idea at the time that there would ever be any controversy between these gentlemen, and I knew nothing whatever about the contents of that paper to which they referred, that contract; I had never heard anything of it, except when Mr. Harrison told me at the time of drawing the assignment that is dated the 8th of December. The assignment which I drew replaced the one that was brought to you, the imperfect one of the 8th of December.

(The plaintiff's counsel here offered the assignment in evidence on behalf of plaintiff, and the plaintiff's counsel then read the assignment as follows:)

"Whereas, by a deed of assignment dated the 11th day of December, A. D. 1894, and recorded in the United States Patent Office in Washington, in Liber U., page 22, of Transfers of Patents, and by a supplemental deed dated the 26th day of November, A. D. 1894, and recorded among the said Transfers — Patents, in Liber Z., 50, at page 174, Walter H. Harrison, of Baltimore city, in the State of Maryland, became the sole owner of a certain invention of an improvement in keg and barrel machines, which invention is fully set forth and described in an application filed in said Patent Office on or about the 6th day of September, 1894, and is numbered, serial number 522,266, and in the letters patent to be therefor issued; and did also become the sole owner of all future inventions of one Henry Campbell, by way of improvement to the keg and barrel machines in said application described, of said Baltimore city (formerly of the State of California), and of all applications for patents for said invention, and of the letters patent to be therefor issued, as well in the United States of America as in certain foreign countries, as is fully set forth in said two assignments;

"And whereas, the said Harrison did, by an agreement dated the 8th day of December, A. D. 1894, covenant and agree with one Franklin J. Morton, of said Baltimore city, for the consideration set forth in the said agreement, to assign and transfer unto said
70 Morton the entire right, title, interest and estate of him, said Harrison, in and to the aforementioned invention, improvements, applications and letters patent:

"Now this instrument witnesseth, that for and in consideration of the premises, and of the sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, the said Walter H. Harrison has sold, assigned, transferred and set over unto the said Franklin J. Morton the entire right, title, interest, estate, claim and demand of him, the said Harrison, in and to the aforesaid application for letters patent of the United States, and in and to the invention

therein described, and in and to all other inventions, applications and letters patent, mentioned or referred to in the two deeds of assignment hereinbefore mentioned; and said Harrison hereby authorizes and requests the said Commissioner of Patents to issue the aforesaid letters patent to the said Franklin J. Morton, as the assignee of his entire interest in and to the same.

"Said invention and inventions and letters patent, and all rights under the aforesaid recorded assignments, to be held by the said Franklin J. Morton for the sole use and behoof of himself, his personal representatives and assigns, as fully as the said Walter H. Harrison could have held the same had these presents never been executed.

"In testimony whereof, the said Walter H. Harrison has hereto set his hand and seal, at Baltimore, Maryland, this 8th day of December, A. D. 1894.

"WALTER H. HARRISON. [SEAL.]

"In the presence of—
"J. J. BENTON.
"JNO. WATSON, JR."

(Recorded Dec. 11, 1894.)

That is a certified copy of the assignment that I prepared at Mr. Harrison's request. I sent that to Washington with a letter requesting that when it was recorded the original should be sent to Mr. Morton.

Q. Well, do you know anything about whether it was sent to Mr. Morton; and if you do, how do you know?

A. The only knowledge that I have on the subject, up to a few minutes ago, was that on the abstract book in the records of the Patent Office I saw a note to the effect that it was sent to Mr. Morton. That is all I know up to a few minutes ago. I have seen the original assignment in the hands of counsel.

Mr. POE: Gentlemen, we give you notice to produce it.

Mr. CARTER: Gentlemen, this is the original of the paper which you have just read.

(The witness then identified his signature to the original paper so produced.)

—. This is the original paper; the dating is in my handwriting; it was executed on the 10th.

Q. This was executed, you say, on the 10th?

71 A. The record shows that it was recorded on the 11th, which would indicate that it was mailed on the 10th, and received in Washington on the 11th. I placed it in the envelope and put it in the letter-box. I have spoken of an interview at my office, at which I was present, between Mr. Harrison and Mr. Morton, on the 11th of December, 1894, and I show you this assignment, to which they had but one witness, and I put my name to it. I stated that I did not know who produced this paper; it was produced in my office and I was asked to sign it, or at least

upon stating that it was not in proper shape to be recorded, and that two witnesses were necessary, I was asked to sign as a second witness; by whom I was asked I di- not know, although I believe it was Mr. Morton; I cannot say that positively, one way or the other. It is marked "Duplicate."

(The plaintiff and defendant each produced copies of this paper marked "Duplicate," which is herein inserted.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Walter H. Harrison, December 8, 1894, and recorded in Liber U., 50, page 267.

Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

In testimony whereof, I, S. T. Fisher, acting Commissioner of Patents, have caused the seal of the Patent Office (Seal's place.) to be affixed this 9th day of November, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and twentieth.

S. T. FISHER,
Acting Commissioner.

Liber U 50, page 267.

Whereas, by a deed of assignment dated the 11th day of September, A. D. 1894, and recorded in the United States Patent Office, in Washington, in Liber U., 50, page 22 of Transfers of Patents, and by a supplemental deed of assignment dated the 26th day of November, A. D. 1894, and recorded among said transfers of patents, in Liber Z., 50, at page 174, Walter H. Harrison, of Baltimore city, in the State of Maryland, became the sole owner of a certain invention of an improvement in keg and barrel machines; which invention is fully set forth and described in an application filed in the said Patent Office on or about the sixth day of September, A. D. 1894, and is numbered serial number 522,266, and in the letters patent to be therefor issued, and did also become the sole owner of all future inventions of one Henry Campbell, by way of improvement to the keg and barrel machines in said application described, of said Baltimore city (formerly of the State of California), and of all
72 applications for patents for said inventions, and of the letters patent to be therefor issued, as well in the United States of America as in certain foreign countries, as is fully set forth in said two assignments.

And whereas, the said Harrison did, by an agreement dated the eighth day of December, A. D. 1894, covenant and agree with one Franklin J. Morton, of said Baltimore city, for the considerations set forth in the said agreement, to assign and transfer unto said Morton the entire right, title, interest and estate of him (said Harrison),

in and to the aforementioned inventions, improvements, applications and letters patent. Now this instrument witnesseth, that for and in consideration of the premises, and of the sum of one dollar to him in hand paid, the receipt whereof is hereby acknowledged, the said Walter H. Harrison has sold, assigned, transferred and set over, and doth by these present- sell, assign, transfer and set over unto the said Franklin J. Morton the entire right, title, interest, estate, claim and demand of him, the said Harrison, in and to the aforesaid application for letters patent of the United States, and in and to the invention therein described, and in and to all other inventions, applications and letters patent mentioned or referred to in the two deeds of assignment hereinbefore mentioned, and said Harrison hereby authorizes and requests the said Commissioner of Patents to issue the aforesaid letters patent to the said Franklin J. Morton, as the assignee of his entire interest in and to the same; said invention and inventions and letters patent, and all rights under the aforesaid recorded assignments to be held by the said Franklin J. Morton for the sole use and behoof of himself, his personal representatives and assigns, as fully as the said Walter H. Harrison could have held the same had these presents never been executed.

In testimony whereof, the said Walter H. Harrison has hereto set his hand and seal, at Baltimore, Maryland, this 8th day of December, A. D. 1894.

WALTER H. HARRISON. [SEAL.]

In the presence of—
J. J. FENTON.
JOHN WATSON, JR.

(Recorded Dec. 11, 1894.)

The copies were handed to me to affix my signature as a witness, and how they were handed back I do not know; I do not know whether I handed one to each one of them, or whether they picked them up, or what happened. I do not know who produced them. That is my signature attached to both of them.

(The witness was then shown a power of attorney, which he identified, and continued as follows:)

The patent had originally been applied for by Graham & Low, patent attorneys in Washington. I will have to give you a little bit of history here to explain matters; some time before any of this business came up, I met Mr. Harrison on the street one day, and he, thinking that I was still in Judge Fisher's office, asked me how
the Judge was, and I told him that I hadn't seen him for some
73 time; that I had an office of my own now, and told him
that I was making a specialty of patent business. He then said that he might have some of that business for me, and when these matters came up he told me that he wanted to throw all the patent business he could in my way, and to that end he wanted us to take out foreign patents on this, or at least wanted us to be the

attorneys to take out foreign patents for this invention; I mean my brother, James A. Watson, and myself. James A. Watson resides in Washington; we are partners in the patent business, and Graham & Low being the attorneys of record, it became necessary, before we could act in the case, or before my brother could act in the case, that Graham & Low's power of attorney, which was contained in the application for a patent, should be revoked, and that my brother should be substituted in their place. Such papers as these are always made out, *and* my brother's name, I being here in Baltimore and he there, it was conducted in his individual name. Of course this is a partnership business; this patent business; he being in Washington and I here, and in order that we might pay the final fee and take out the necessary *p*etters patent, it was necessary to have a power of attorney, and I accordingly drew this power of attorney.

The power of attorney is here offered in evidence, and read as follows:

"BALTIMORE, MD., *December* 18, 1894.

"To the Commissioner of Patents, Washington D. C.

"SIR: We hereby nominate, constitute and appoint James A. Watson, of Washington, D. C., our true and lawful attorney for us, to transact any and all business in the United States Patent Office in connection with the application of the undersigned, Henry Campbell, for a patent for an improvement in machines for making barrels, kegs, &c., dated September 6th, 1894, numbered 522,266, and allowed December 18, 1894; to pay final fee, and to receive the patent when issued.

"Hereby revoking all powers in respect to said application and patent heretofore given.

"HENRY CAMPBELL, *Inventor.*
"FRANKLIN J. MORTON,
"*Assignee from Harrison.*
"WALTER H. HARRISON,
"*Assignee from Henry Campbell.*

"Test: JOHN WATSON, JR."

This was on the date of the receipt of the notice of the allowance of the patent from the Patent Office, or at least on the day that it came into my possession. It did not come directly to me.

No one directed me to prepare the paper; as far as I can recollect, it was my own suggestion. The notice of the allowance was shown to me or brought to me, I think, by Mr. Harrison, and that I thereupon told Mr. Harrison that before we could appear in the case it would be necessary to have this power of attorney, and I drew the power of attorney and saw it signed by the three parties
74 whose names are attached, and I witnessed their signatures. I don't recollect where it was signed; my impression is that Mr. Harrison's and Mr. Campbell's signatures were attached to that paper at Mr. Harrison's office on Courtland street, and Mr. Morton's signature must have been attached in his office, for this reason: that I have no recollection of having any business transaction

with Mr. Morton except in his own office, saving the time when he was in my office, on the 11th day of December; he may have been in the office on another occasion, but I don't recollect it. On the 18th of December the application was allowed, and the notice was sent by the department under that date, December 18th, notifying the parties that the application for the patent for improvements in machines for making barrels, kegs, &c., filed September 6, 1894, had been examined and allowed; this is dated the 18th.

The paper was addressed to Mr. Campbell, care of Graham & Low, who were then his attorneys. It was handed to me by Mr. Harrison at the outset, as I believe it must have been on the 19th; and then on the 19th this power of attorney bears date. It is witnessed by me; I saw the parties sign their names to it. I forwarded the power of attorney to my brother and he necessarily filed it in the Patent Office, or it would not appear in the record. Here it is in the record: "Department of the Interior, United States Patent Office, Washington, D. C., December 26th, 1894."

It is a letter addressed to James A. Watson, city.

"SIR: You are hereby informed that your power of attorney has been accepted in the matter of the application of Henry Campbell for letters patent for an improvement in machine for making barrels, kegs, &c., No. 522,226, filed September 6th, 1894. Very respectfully, John S. Seymour, Commissioner of Patents." And then there is a similar note of the same date to Messrs. Graham & Low, 115 Broadway, New York, dated December 26th, 1894:

"SIRS: You are hereby informed that your power of attorney has been revoked in the matter of the application of Henry Campbell for letters patent for an improvement in machines for making barrels, kegs, &c., No. 522,226, filed September 6th, 1894." The original power of attorney was forwarded by me to my brother in Washington after it was recorded, and it is kept in the Patent Office. Of course it is in the Patent Office, as that paper which you have there is a certified copy of what they call the file-wrapper and contents. That is, all papers relating to the issuing of the patent, from the date of application down to the issue, and all papers filed in this case are numbered and placed in regular order and kept there. All papers are retained there; they do not deliver any papers that are filed in the office except assignments, when recorded. The assignment was sent back to Mr. Morton here. I know about the granting of letters patent by the department. The letters patent were granted on the 22nd of January, and were received by me either the 23rd of the 24th. I don't know which. They had first been sent to my brother, who was the attorney of record, and he forwarded the letters patent to me. Mr. Franklin
75 J. Morton paid the final fee of $20.00, that is the Government fee, which I forwarded to my brother along with other moneys on the same account. I mean that Mr. Morton paid the $20.00 to me. How the check was drawn I don't know; I don't know whether the check was drawn to John Watson, Jr., or Watson & Watson; most likely it was drawn to Watson & Watson, because that is the way in which I rendered the bills. But that was imma-

terial. If the check was drawn to Watson & Watson, I endorsed it to Watson & Watson, and deposited it in my private account, and then sent my own check to my brother. Mr. Morton came to pay me $20.00, to be sent to the Government as this final fee; in this way—I had applied to him for it; I sent Mr. Morton a bill for it. I have a copy of that bill; the original of it is in Mr. Morton's possession, of course. On December 21st, 1894, I rendered a bill to Mr. Morton. Well, I will not say I rendered the bill on that date; the bill was probably rendered a day or two later.

(The witness here reads the bill as follows:)

Mr. Franklin J. Morton, Dr., to Watson & Watson.

To costs and services in filing the following applications for patents on the Campbell barrel and keg machine, U. S. patent for which was allowed Dec. 18th, 1894, covering all costs and fees.

Great Britain	$85 00
France	85 00
Germany	85 00
Austria	85 00
Hungary	50 00
Belgium	65 00
Canada	70 00
Total	$525 00
To final U. S. Government fee, same case	20 00
	545 00
Less amount paid Graham & Low, Dec. 20, '94	180 00
	$365 00
To cost of oaths, $1.00, and recording Canadian assignment, $2.00	3 00
	$368 00

It is receipted "Watson & Watson, Dec. 24th, 1894," and that bill is marked O K by W. H. Harrison. That bill was paid by Mr. Franklin J. Morton. On or about the date of this bill, Dec. 20th, 1894, one of the firm of Graham & Low, I think it was Mr. Low, came to Baltimore with the specifications typewritten for the applications, to go with the applications for patents into the foreign countries covering this invention, and having found out or been informed that Watson & Watson were now the attorneys in
76 the case, or James A. Watson, Mr. Low made out his bill for what he had done, and I considered it at the time a very exhorbitant bill for the work that he had done, but inasmuch as there was still a margin in it for Watson & Watson, and as I understood that we were getting, at least I believed we were getting into some pretty large business, we were willing to go on with the work, although our fees were curtailed to the extent of $180.00 and that is

the allowance we charged in our bill here at full rates for the foreign patents, and then make an allowance for the $180.00 which he paid to Graham & Low. If my recollection serves me right, I took Graham & Low's bill to Mr. Morton and got the check; I am not perfectly positive of that, but I think that was the case. It was marked O K by Harrison before it was paid. My recollection is, that when I took this bill to Mr. Morton, and when I first took it, he at first demurred and said that, "Not today," or something to that effect; that was done on every occasion when I took a bill to him, and Mr. Low was waiting in town for his money, and I then saw Mr. Harrison, and I think that was the time that Mr. Harrison marked the bill O K, and then it was again taken back to Mr. Morton and Mr. Morton gave the check. I cannot say what became of the check after it was drawn by Mr. Morton. I think he delivered it to me, and that I either personally handed it to Mr. Low or else handed it to Mr. Harrison, or some one for Mr. Low; I cannot say about that. At all events they got it, because there is their endorsement upon it, Graham & Low, H. N. Low. H. N. Low was the man. It reads thus: "Graham & Low, pay to the order of the Columbian National bank for collection and credit account of the Washington Loan & Trust Co., Andrew Parker, secretary." "Pay Job Scott, cashier, or order, for credit account of the Columbian National Bank of Washington, D. C., Clarence Carson, cashier," and then it is paid Dec. 22, 1894; so it came back to Baltimore. Here is the other check; that is a check drawn on the First National bank to the order of Watson & Watson. The date of that is December 24th, Christmas eve. It corresponds to the receipt, and it is for $368.00, endorsed Watson & Watson, for deposit, John Watson, Jr., and then endorsed for deposit in the National Farmers' and Planters' bank to the credit of the Baltimore Trust and Guarantee Co. Mr. Morton drew the checks or signed the checks, and I think the whole check is in his handwriting. I know that he signed the checks. He signed them A. B. Morton & Sons. On the 18th of Dec., 1894, notice was sent by the department that the application had been allowed; but that does not complete it. It was sent to Graham & Low, and by them to Campbell. The patent having been allowed, the inventor or the owner of the patent has six months in which to pay the final fee of $20.00 to the Government, and upon the payment of that fee, in the regular course of business, which usually takes from two to three weeks, the patent is issued. This patent was issued on the 22nd of January, 1895, I believe, and was forwarded to me or forwarded by my brother to me, and I received it on the 23rd or 24th of January, 1895, and I noticed at once that the patent was issued in the name of Henry Campbell; I showed the patent to Mr. Harrison, and Mr. Harrison said that the patent was to have been issued in the name of Mr. Morton, and should have been so issued, and asked me to go to Washington and see about it. I went to Washington and
77 saw the head of the Assignment division, and through his efforts and the other clerks, I ascertained that the probable reason why it had not been issued in the name of Mr. Morton

was this; the original assignment from Mr. Campbell to Mr. Harrison did not contain the request, which the rules of the Patent Office required that the patents should be issued in the name of the assignee; so in that case there should have been the request that the patent should have been issued in the name of the assignor and assignee and owning half undivided interests, and I was satisfied at once that that was the reason in fact, as I will explain in a moment, that I was so well satisfied of that, before I started to Washington. After my further investigation, however, the Patent Office reported that while they thought in the future they would modify the rule regarding that request in the assignment, that they could not go back on their rules at the present time, and that the patent would have to stand as issued in the name of Mr. Henry Campbell. That took up a few days, several days, and when we got the final advice from the Patent Office that they could not issue it in any other way than in this, I at once enclosed the patent in this envelope with a letter explaining the delay; explaining why the patent was issued in Mr. Campbell's name, and further, that the title to this invention and the letters patent was entirely in him, Mr. Morton, notwithstanding, on the face of the paper it appeared to be granted to Henry Campbell. Now, to go back for a moment, to explain about these assignments, when Mr. Harrison brought to me the first assignment of the half interest to him, which had been done by some other person, I noticed at once that this request to the Commissioner to issue the patent in their joint names had been omitted, and I did not wish to call the attention of the Patent Office to the failure to insert that request, therefore, when I drew the assignment of the second half interest, of which was the assignment then of the whole interest, I purposely omitted that request. Then when I drew the assignment from Mr. Harrison to Mr. Morton, I neglected the usual request that it was to be issued in the name of Mr. Morton. There was nothing, of course, wrong about this, but my object was simply that this defect appearing in the first assignment, I thought that perhaps they would overlook it and grant the patent as requested, in the final assignment. When I speak of it as a defect, it is not a defect; it is simply an omission of this request to issue the patent—the assignment of a patent carries the patent. I received the letters patent, and then I made some effort to have a change in them, and not succeeding in that, I enclosed the patent in this envelope and forwarded it with the letter to Mr. Morton by a messenger boy. I just cut that envelope open. It has been sealed ever since I received it.

Here is the letter itself, the original letter. I sent it down to Mr. Morton by a messenger boy on the 1st day of February. The messenger boy returned with the package and stated that they had refused, or Mr. Morton or some one in his office had refused to receive it. He exhibited to me his ticket, and stated that the package had been signed for, or receipted for, and then the receipt erased: the ticket showed that erasure. I told him to take the patent
78 back to Mr. Morton, sealed as it was until this moment when I opened it. I sent it a second time on the same day, at once,

with instructions to the messenger boy to take it there, and if they did not receipt for it, to leave it, as I considered it Mr. Morton's property; in fact, as I knew it was. And the messenger boy went down, or at least left me, and after a short time returned and said that they had again refused to receive it. I then mailed the letter to Mr. Morton. On the same day, after sending the patent and it having been returned, I wrote this letter to Mr. Morton:

"Mr. Franklin J. Morton, Baltimore.

DEAR SIR: I sent you by messenger today the U. S. letters patent for the Campbell barrel and keg machine, and was rather surprised to have it returned. I sent it a second time, and the boy reported to me that you refused to receive it. As the patent is your property, I do not understand why you decline to receive it.

I will place the patent in my safe, and will hold the same subject to your order.

The patent was issued February 22nd, 1895. I sent you enclosed with the patent, a letter explaining the cause of the delay in delivering the same.

Yours truly, JOHN WATSON, JR."

That letter was mailed, and, of course, received.

Upon the return of this package, I placed it in my safe, sealed as it was when I sent it to Mr. Morton, and it has never been out of my safe since, until yesterday morning, when I placed it with these other papers to bring down to court, and it has never been opened until just now. The letter is as follows:

"FEBRUARY 1ST, 1895.

Mr. Franklin J. Morton, Baltimore.

DEAR SIR: I enclose you herewith letters patent of the United States, No. 533,034, issued in the name of Henry Campbell, and dated January 22nd, 1895, said letters patent being for a machine for making barrels, kegs, &c.

It was the intention that this patent should issue in your name as assignee, and the assignment from Mr. Harrison to you contained the usual request to the Commissioner to so issue it; but it seems that the assignment from Mr. Campbell to Mr. Harrison did not contain such a request; hence the issue to Mr. Campbell.

We have made every endeavor since to have the Patent Office issue the patent in the way we desired; but the office declines to go back of its rules. This explains the reason of the delay in sending you the patent, which was issued January 22nd.

The legal and equitable title to the invention covered by these letters patent is in you, just as fully as if the same had been issued in your name as assignee. The only object in attempting to
79 have it changed was to have it appear *on the face of the patent that the same* was issued to you. The entire ownership is in you.

Yours truly, JOHN WATSON, JR."

Mr. Morton signed powers of attorney for filing with the applications for patents in Great Britain, Germany, France, Belgium, Austria and Hungary—no, I am mistaken about Great Britain; there was no necessity for signing a power in that case, but in the others he did. He signed powers of attorney for foreign patents to be annexed to the specifications. (They are filed in the foreign patent offices, forming part of the specifications.)

I was about to say that those powers of attorney were signed by Mr. Morton as owner. That is the usual way in which patents are applied for in these foreign countries; the inventor does not make the application; the owner makes it. These powers were signed by Mr. Morton as owner of the patents. Since the applications were duly made, the patents have all been granted except in Germany, and we have the patents here for Great Britain, France, Belgium, Austria, Hungary and Canada.

The witness having been shown certain papers for identification, continued as follows:

This is the English letters patent for improvements in barrel-making apparatus, which is the same invention as is described in the letters patent granted on this Campbell barrel and keg machine, the subject of the contract in this case.

Q. This printed matter?

WITNESS: Is a copy of the specifications. The application was made in the form of a communication, thus:

"Mr. Franklin Joy Morton, of 2724 North Charles street, Baltimore, Md., U. S. A., merchant."

The communication was sent in the usual way to our foreign correspondents, Boult & Wey, of London, and they filed these communications with the applications, and patents were subsequently forwarded to my brother at Washington, and forwarded in this envelope to me here in Baltimore.

I stated that I had powers of attorney for all foreign patents—at least for the patents in France, Belgium, Germany, Austria and Hungary; that Great Britain was applied for by means of a communication. As a matter of fact, when I took to Mr. Morton several powers of attorney, which were for these foreign patents, and among others a power of attorney for application for the patents in Great Britain, Mr. Morton signed that power of attorney. When I sent that over to my brother in Washington, he informed me that that was not his habit for applying for English patents; that he preferred to do it by means of a communication; and that he had made the application in that way. I think that, by sending to my brother, I can probably get that original power of attorney. I had not thought of it before.

Mr. Morton having refused to receive from me the United States letters patent for this invention, I did not see any use in forwarding these patents as they were received by me to Mr. Morton. I
80 therefore wrote him a letter, in each case, reciting that his patents were in my possession subject to his order.

Mr. POE (to counsel for defendant): Now give us the letter, gentlemen. We have given you notice to produce it.

NOTE.—Defendant's counsel produced the originals of the following letters of March 18, April 17, and May 17, 1895. The remainder were read in evidence from the letter-press book of the witness.

Q. Look at the letter of March 18th, purporting to be sent by John Watson, Jr., and addressed to Franklin J. Morton, Esq., Baltimore, and state what you know about it.

A. That is the letter which I addressed to Mr. Morton on that day, March 18th.

Q. Read it to the court.

The witness read as follows:

"MARCH 18, 1895.

"Mr. Franklin J. Morton, Baltimore.

"DEAR SIR: I have received notice from the English patent office of the acceptance of the complete specification of the barrel and keg machine application.

"We have had an inquiry through our London correspondents as to whether or not the British patent is for sale, and upon what terms.

"I have received a Hungarian patent for the same machine.

"The German application has been rejected on a couple of German patents, but we shall present an argument to the Patent Office, and expect to have the patent allowed in due course. This is quite a common thing in Germany, where they are very particular in the matter of granting patents.

"The Hungarian patent I hold here subject to your order.

"Yours truly,

"(Signed) JNO. WATSON, JR.

"P. S.—The British patent will probably issue in 6 or 7 weeks."

WITNESS: Here is the letter of May 17th, 1895. That was written by me to Franklin J. Morton.

(The witness reads it as follows:)

"MAY 17TH, 1895.

"Franklin J. Morton, Baltimore.

"DEAR SIR: I am today in receipt of British patent for the keg and barrel machine, which I hold here subject to your order.

"Yours truly, JNO. WATSON, JR."

Here is the letter dated April 17th, 1895, and the witness reads that as follows:

WITNESS: The letter of April 17, 1895, was written by me to Mr. Morton, and reads as follows:

81 "APRIL 17, 1895.

"Mr. Franklin J. Morton, Baltimore.

"DEAR SIR: I am in receipt of the Canadian and the Belgian

patents covering the keg and barrel machine, which I hold here subject to your order.

"Truly yours, JNO. WATSON, JR."

Those patents referred to in those several letters are here. This is the English patent that we have just seen. This is the French patent. This is the Belgian patent. This is the Austrian patent. Here is the Canadian patent.

I find this letter, also, which I read:

"JUNE 13, 1895.

"Mr. Franklin J. Morton, Baltimore.

"DEAR SIR: I am today in receipt of the Austrian patent for the barrel and keg machine, which I hold at my office subject to your orders.

"Yours truly, JNO. WATSON, JR."

That embraces all the foreign patents that were received by me. I do not know whether I have read all the letters or not. They are all here. Here is another one:

"JUNE 6TH, 1895.

"Franklin J. Morton, Esq., Baltimore.

"DEAR SIR: I am in receipt today of the French patent for the barrel and keg machines, which, like those heretofore received, I hold subject to your order.

"Yours truly, JNO. WATSON, JR."

That letter was sent to Mr. Morton on that day. I believe that covers them all.

HENRY CAMPBELL, the witness of the plaintiff, heretofore examined, was recalled by the plaintiff for further cross-examination, and testified as follows:

The witness, having been shown a receipt in the hands of the defendant's counsel, was asked if that was his signature attached to it, to which he replied, that it was. The receipt was then read in evidence and is in words and figures as follows. It is dated on the 3rd of December, 1891:

"Received through Grafflin Cook, $300, being the equivalent of 61 pounds and 17 shillings, as an advance on the payment of 300 pounds payable to me under an agreement with Samuel G. B. Cook, dated January 23, 1891.

"HENRY CAMPBELL."

Redirect examination:

There are two contracts mentioned in that receipt; that of December 3, 1891, and February 4, 1892. One was for a wire-nail-driving machine, and the other one was for a box-fastening machine.

82 The contract of December 20, 1890, entitled me to 400 pounds; and the contract of January 23rd entitled me to 800 pounds; all told, I was entitled to 1,200 pounds from Mr. Cook. I looked at the receipt that was exhibited to me yesterday, dated February

4, 1892. That was for 238 pounds and 3 shillings, and the receipt this morning reads: "Received through Grafflin Cook, 300 dollars, being the equivalent of 61 pounds and 17 shillings."

I had two contracts with Mr. Cook when I came over here; those two contracts were merged into one company, called the box machinery company; the ownership of that, as I always understood, was in Samuel G. B. Cook, although the business was done through Grafflin Cook, his son; in fact, the stock, all of it, was issued to his son, and the company was organized by his son, under special instructions from Samuel G. B. Cook. Before coming over here I received from Mr. Cook, as per this agreement, the stock in the English Bottle Seal Company, which I was told to hold and not dispose of over there, as it would come to a premium in this country, and therefore it would be better to make a little something over here instead of taking the cash for it over there. The other moneys I received on the contract all right. But after I had arrived here the payments did not come along. One hundred pounds cash I received in London; one hundred and fifty pounds I received in stock, or shares of the Bottle Seal Company of England. I am talking about the payment under the contract for the metal corner fastener, and of January 23, 1891. Also, prior to that I had received from Mr. Cook, for a box-nailing machine, 100 pounds, in London, on filing the application. That money I received in London. That left 150 pounds. On the issue of letters patents in the United States, and the balance, 150 pounds, on the assignment of the letters patent to the company to be formed and incorporated here in Baltimore. It goes on to state here in the contract in regard to the box-corner machine, that there was to be a payment due of 250 pounds 6 months after the incorporation of the Baltimore company, box machinery company; and 12 months thereafter another payment of 300 pounds—making altogether the 800 pounds. I find you show me here two receipts for 300 pounds. I find no receipt here for 300 pounds, I take it. As they have brought these two receipts in full, showing an ultimate transaction, I would like to see the receipts prior to this. I want to see the receipts from Grafflin Cook prior to this payment—the receipts for all moneys up to the 3rd of December, 1891.

Mr. FISHER: We call for those receipts.

WITNESS: I want Grafflin Cook's receipts for moneys that he paid me up to this date. This matter has been jumbled up here. I was informed when I signed that, that that meant the payment of the 250 pounds, which was right up to February 4, 1892, leaving the 300 pounds still due me.

Mr. POE: We think he is entitled to have the receipts exhibited to him. If our friends can get some receipts they can get others.

Mr. GANS: We offered that paper signed by Campbell. That is an admission that all the money on that contract had been paid except 300 pounds at that time. If that is not a receipt I should like to know what it is. I want the receipts.

83 Mr. WHYTE: We make the demand formally and ask the stenographer to take it down.

Mr. GANS: We refer you to the man who owns the receipts, Mr. Grafflin Cook. Summon him.

(Mr. WHYTE:)

Q. To witness: I understand that you desire these receipts before you make any explanation of that last receipt.

A. Yes, sir; I would like to see the other receipts. I would like to see them for this reason: The first contract with reference to the box nailing—they were all due in six months, and the balance took over 12 months to run.

The plaintiff, further to maintain the issue on his part joined, called JOHN B. NOYES, a competent witness, who testified as follows:

That he was 54 years of age and a manufacturing machinist. He knew the parties to the suit. That he had an interview with Mr. Morton in the month of December, 1894. It took place in his office, Mr. Morton's, on December 14th, by his request, through Mr. Harrison.

In consequence of a request to me from Mr. Harrison I went to see Mr. Morton at his office. I went with Mr. Harrison to see Mr. Morton. *I had a conversation with Mr. Morton in regard to taking charge of the mechanical part*—to become mechanical manager of the new company to be formed for making all the new machinery that makes barrels. Mr. Morton asked me if I would be willing to take charge of the mechanical business, as I had made most of the barrel machinery for Mr. Campbell's inventions. The business of which he spoke was the business of building machinery for making kegs and barrels under the patent that he had bought from Mr. Harrison; he wanted to know if I would accept the position of manager of the mechanical department, under the management of Mr. Campbell, with Mr. Campbell as general manager. Under the patents that he had bought from Mr. Harrison; these patents now in question.

He told me he had purchased it from Mr. Harrison, and that was his idea in meeting me, to see if I would go on and build them as I had built work for the Campbell Barrel Machine Company. That is the reason, I suppose, that he had, and when I got there that was the conversation. I had built most of the machines for the Campbell Barrel Company, and Mr. Morton asked me if I would not accept employment as manager. For taking management of this new company, as I had been building most of the machines for the old company; he wanted to know if I would do it under the management of Mr. Campbell. I said I would; I was only too glad to do it, because I appreciated the value of this new patent. I had an order for 12 of the old machines, of which 4 were finished and delivered; so there were 8 remaining, partially built. The heavy work was done, the light work was not. I know they were sold at auction in my insolvency. Mr. Harrison was the trustee And there were 8 left on hand, there were 8 partially finished machines; they were on the premises at the sale. That was the only conversation I had with

him; my matters did not come to a close satisfactorily, and
84 I had no occasion to go there. Then these differences came on, the contracts were not taken up, and I was waiting developements. I had no occasion to go there, and I suppose he had no occasion to see me. He spoke about the location of a shop being at the corner of Pratt and President streets, as being a good location. They had always been there; that was my location; it was of easy access, a good building, and there was an unoccupied room there in case they wanted more room than they had. They had a store-room there at the time. I mean the old barrel company. They had a store-room there, and it would be handy to have machines built on the premises where their own warehouse was. We had that conversation in general. I am quite positive it was the 14th of December.

Of course I could have no voice in that matter, being in insolvency, but he told Mr. Harrison in my presence to look after that at a suitable time—I think that was the idea—in the stage of my insolvency—at a suitable time to secure the location. That is what I remember distinctly; and that he was anxious to get those partially finished machines. That I remember as a particular point that Mr. Morton wanted.

Cross-examination.

(Mr. CARTER:)

Q. You say this conversation took place on December 14, 1894?

A. I am quite positive.

Q. How do you fix the date?

A. I fix it in one way, that I had an order for some springs to go to Riverton for Mr. Morton, through Mr. Harrison, and they were sent on about that date.

Q. Springs made by you?

A. Springs furnished by me for the machines. They were taken off from machines in stock in my own shop and sent to Riverton for Mr. Morton.

Q. Who was present besides Mr. Harrison and Mr. Morton when you had the conversation with Mr. Morton? It was at Mr. Morton's office, you said.

A. It was at Mr. Morton's office, and we three occupied the room.

Q. Was it his private office?

A. It was in his rear private office—yes, sir.

Q. No one else was present?

A. No one was visible, sir, to my knowledge.

Q. Before this conversation you had gone into insolvency, had you?

A. I was either insolvent then, or it was a very sure thing that I had got to go into it, I don't remember which.

Q. I thought you just now said that you had gone into insolvency?

A. Yes, sir, I had. I had stopped my work; if I had not, my

insolvency was pending, my business was broken up, and I had stopped.

85 Q. Had you gone into insolvency?

A. I don't remember the date of my insolvency application.

Q. What I want to know is, when you went down there to Mr. Morton's office, had you gone into court and filed your application in insolvency?

A. I think I had, sir, because I could not have had that conversation if I had not. I know I stood for some ten days on the verge, whether I would be obliged to go into insolvency or not.

Q. You had been for some time before this date manufacturing machines under patents owned by the Campbell Barrel Machine Company, had you not?

A. Yes, sir.

Q. How long had you been manufacturing those?

A. Since they were invented.

Q. What year was that?

A. 1891, I think it was.

Q. Had you done any other business except make those machines?

A. I had done some little jobbing, nothing to speak of.

Q. Your business, then, from the time that the invention went into effect, which you say was about 1891, up to the time that you went into insolvency, with these other little things outside, was that of making machines under the patents held by the Campbell Barrel Company; is that right?

A. My business was principally making machines for the Campbell Barrel Machine Company.

Q. But you have said that besides that there was something that did not amount to much?

A. Yes, sir; I would make a few dies for a party, or some little work.

Q. But that was of small account?

A. Yes, sir.

Q. Under what arrangements with the barrel company did you make the machines?

A. I made them under contract, so much money for a machine.

Q. They were to pay you so much money for making the machines?

A. Yes, sir.

Q. Then how did the machines belong to you? You said that at the time you went into insolvency there were four machines finished and 8 in process of manufacture.

A. Yes, sir.

Q. You said they were sold by Mr. Harrison, who was your assignee in insolvency?

A. Yes, sir.

86 Q. And he sold to whom, did you say?

A. To Mr. Morton.

Q. If you were only making machines for the Campbell Machine Company, they paying you so much for making them, how did they belong to you?

A. Because they were ordered and half done, and I hadn't got my pay for them.

Q. Did you sell the four that were already finished?

A. The four that were finished were delivered.

Q. To whom?

A. They were delivered according to the order of the Campbell Barrel Company.

Q. It was the 8 unfinished ones that your assignee sold to Mr. Morton?

A. Yes, sir.

Q. How long after this interview was it that that sale took place of these 8 machines?

A. This interview was on the 14th of December, and the sale took place the 29th of January.

Q. The sale of what?

A. Of my effects.

Q. Were these 8 machines sold at that sale on the 29th of January?

A. Everything on my premises was sold at that time.

Q. Then you say that on the 29th of January (1895, of course), these machines that you say Mr. Morton bought, was sold on your premises?

A. Yes, sir, they were expected to be sold; the sale expected to begin on the 10th of January, but it was deferred.

Q. Until the 29th?

A. Until the 29th.

Q. Then the machines had not been sold at the time you had this interview with Mr. Morton?

A. No, sir; I think Mr. Morton gave Mr. Harrison authority to buy those machines.

Q. But they were on the premises.

A. Yes, sir.

Q. On your premises on the 29th day of January, 1895, when the auction sale took place; is that right?

A. Yes, sir.

Q. The making of these Campbell machines is what caused you to go into insolvency, is it not?

A. Yes, sir. If I had got my pay for those machines, I would not have gone into insolvency.

Q. For which machines?

87 A. Those that I half built, and which were left on my hands.

Q. But you were not to be paid for them, you said a while ago, until they were finished?

A. When I got them about half done, that meant about half the money, because they cost me all I got for them; I never made a cent on them.

Q. The machines cost you all you got to make them?

A. Yes, sir; and Cumberland & Dugan refused to sell me any more bills, unless I charged high prices for those machines; they said they were worth $50 more than I got, and if I didn't know how to do business better than to sell machines only for what they cost, they didn't want to sell any more to me.

Q. Did you sell all the machines that were being made?

A. I made all the barrel machines

Q. I am speaking about the barrel machines; you made them all?

A. No, sir; not all.

Q. How many did you make during the year?

A. I couldn't tell you exactly; as I say, I made all that they had.

Q. All that were made for them you made?

A. I think I did, sir.

Q. Can you tell us how many there were?

A. No, sir, I couldn't tell you.

Q. Were there 50?

A. Yes, sir, I should think there was; perhaps more than that; I wouldn't undertake to give the number of machines, for I could not.

Q. At the time you had this conversation your sale had not taken place at your works?

A. No, sir.

Q. Mr. Morton said that a company was going to be formed to work this new invention?

A. Yes, sir.

Q. And when that company was to be formed was the time that he wanted you to take the same position with reference to that invention that you had had under the old invention; is that right?

A. Yes, sir.

Q. Did he mention who was to be in the company?

A. No, sir.

Q. He spoke of the project of forming a company to build these new machines?

A. Yes, sir.

Q. And when that company was formed, he wanted you to take the mechanical part that you had had for the old company?

88 A. Yes, sir.

Q. Then nothing more was done, you say, with reference to that; that was the only conversation you had with him at that time?

A. I don't remember at this moment anything more than that; I know that he was anxious to get the partially built machines because he could get them at low prices—that was business—and he was anxious to have me take hold and manage the manufacturing of the new company, because I had had the experience of the old.

Q. You had made all the machines for them, not only at the time you went into insolvency, but ever since you had begun in 1891, had you not?

A. Yes, sir; all that I know of.

Q. Can you tell how many there were per year?

A. No, sir; I wouldn't undertake to; it is a very easy matter to get that from their records.

Q. How much did each machine cost you?

A. Well, there was some 24 machines that I was to get fifty dollars for, but didn't get anything for; sold them for old iron at a cent and a half a pound.

Q. Why did you not get anything for them?

A. Because they concluded to wait and make some material changes, and that so distrusted me that I threw the whole thing into the scrap heap.

Q. Then you had not finished those machines?

A. No, sir; because it would cost me more to finish them than it would to make new patterns and make new machines.

Q. How much did each machine cost you that you made for them—not those you did not make? You say they cost you just as much as you got for them?

A. The first machines I made I got $50 for.

Q. Did you say the first machine or first machines?

A. The first machines; the first lot; the first style I got $50 for.

Q. Go on.

A. I think every machine I made cost me more than that.

Q. How much did you get for the rest?

A. They made a new machine that was a great deal heavier, more expensive, and a great deal better machine, and I got $80 for that.

Q. Did those new machines cost you that?

A. They cost me more than that; because I only made and delivered four of them. If I could have made them in lots of a dozen or twenty, as was anticipated and promised, I could have got up special machinery and tools, so as to make a profit. But as it was, I lost money on them.

89 Q. But you were to make 12 of these new machines?

A. I was.

Q. You had finished four?

A. Finished and delivered four and got the money for them.

Q. The other 8 you were not to get your money for until you finished them?

A. I drew so much money a week on the machines.

Q. Then that was the agreement, was it, that you should draw so much a week?

A. No, sir, but I did that.

Q. They paid you?

A. They paid me.

Q. Though they were not bound to pay you?

A. It was the agreement that I was to draw so much a week; I remember now.

Q. According to that agreement, they paid you so much a week on these that you had not finished?

A. No, sir.

Q. I thought you said so.

A. No, sir, I did not say so; they paid me so much a week, and at the time I delivered four machines, when I went back for my other payment, I had some 5 or 6 men at work on these other machines, and they were about half done, and of course I had paid for that; that work stood in my shop, as paid for at that time. When I went for my money Mr. Grafflin Cook said: "Don't finish them; we have got no money." I said they had been ordered. He said, "I can't help it; if you finish them we can't pay for them," and then I stopped. That was a year ago—nearly—yes, more than a year ago now. I held those machines, hoping to be able to do something with them in some way for about a year—more than a year.

Q. Then you mean you had not done anything for the Campbell Barrel Machine Company for a year before you went into insolvency?

A. I had been doing small work.

Q. For them?

A. Yes, sir, for them; and I left my men go, but I staid in my shop to keep it open; there was no business done to speak of.

Q. For a year, then, before you went into insolvency—which was some time in 1894, towards the end of 1894—the Campbell Barrel Machine Company had not been building any machines at all; is that right?

A. Yes, sir.

Q. When did you build these four that were finished?

A. I think the last one was delivered in July.

Q. July of 1894?

A. No, sir.

90 Q. Let me get the dates. You went into insolvency some time toward the end of 1894; you have not fixed the date yet; do you mean the July of that year, or the July of 1893?

A. I sold those unfinished machines——

Q. No, I am talking about the four finished ones.

A. I say I held the unfinished ones for a year, and the four were delivered before I stopped work on the unfinished ones.

Q. The last finished machines you delivered to the Campbell Barrel Company were delivered at least a year before you stopped work, and went into insolvency?

A. Yes, sir.

Q. You stopped work before you went into insolvency, you say?

A. I stopped work of any account; sometimes I would have a little something to do, and would hire a man, but most of the time I was there alone.

Q. So that when you delivered these machines more than a year before you stopped in 1894, Mr. Cook, the secretary or treasurer, told you that the Campbell Barrel Company had no money to pay you for the unfinished ones; is that right?

A. Yes, sir.

Q. I have been obliged to ask you about this, because you intro-

duced it; my question was this; how much the 12 big machines that had been ordered cost you, and I understood you to say $80?

A. Yes, sir.

Q. And that is all you were to get for them?

A. Yes, sir.

Q. So that the $50 machines which you had theretofore made cost you all you were to get for them?

A. Yes, sir; I never made a penny out of them.

Q. And the $80 machines the same way?

A. Yes, sir.

Q. What did the Campbell Barrel Machine Co. get for these machines you had made?

A. That I don't know; I don't know anything about the machines after they left my place.

Q. You received as much for them as you could get, I suppose?

A. Yes, sir, I got all I could, but I couldn't get anything for the last eight.

Q. You made the price as high as you could for the work you did?

A. No, sir; I made the prices as low as I could, because I was very friendly to the Campbell Barrel Machine Co., and if they could get machines at a low price they would be more apt to sell more machines, and so I would have had a larger business. That was the basis I went on, and I made my prices with a view to
91 making a number of machines, and the making of a number of machines would allow me to invent and produce special machinery for making parts, so that I could make a profit in that way.

Q. They were not able to give you orders for large numbers of machines. If you had had large orders, you would have been able to make a profit out of them, as I understand you?

A. If I had had the orders that were anticipated and promised me, I am confident I could have made a profit and would have continued.

Q. But nobody else was giving orders for them, aside from the company?

A. Not that I know of.

Q. You would know it, would you not?

A. I don't know. I came there a stranger, and never went out of my own shop.

Q. Take it from the time they began in 1891, so far as you know, you made all their machines?

A. Yes, sir.

Q. They had made all that they could sell, had they not?

A. That I don't know, sir.

Q. At all events, they did not give you enough orders to make the business profitable; that is the truth, is it?

A. The business was not profitable to me.

Q. Because it cost you all you got to make them?

A. Yes, sir.

Q. The machines that you had been making for putting up these

barrels—you said a while ago that you were anxious to get the mechanical employment under this new company?

A. Certainly I was.

Q. The machines you had been making were machines for putting up barrels and kegs, were they?

A. For making staves, and doing the barrel-work generally.

Q. And putting the staves on the barrel heads?

A. My machines were principally for making the staves.

Q. You said "for barrel-work generally;" what do you mean by that?

A. There were some little things used—I know what you refer to; there were those machines there, setting-up machines, but I don't remember that I built all of those.

Q. You built some setting-up machines for them?

A. Yes, sir.

Q. That is, you mean, for setting up the staves, putting them into the barrel, putting the head on, and all?

A. Oh, no; the machine for doing that is the machine that is now in controversy here.

92 Q. One moment. You say the principal business you did was making what part of the barrel?

A. The staves, closing the ends, finishing the ends, and preparing them for the cooper, to put up by his old method or the new method, that the Campbell Barrel Company had, for setting them up, and admitting the head and the two top hoops.

Q. Beside those, it was your principal work, you said just now, to make some machines for the Campbell Barrel Machine Company, which were machines for setting up the barrel; is not that what you said?

A. Yes, sir.

Q. What was the nature of that?

A. That was the very simple device of a disk, with an upright into another disk on that, supporting a head with fingers in it, the fingers clasping the head, and holding them in position while the cooper went around these disks with staves.

Q. Then the effect and operation of that machine was to set up the barrel, was it not?

A. With that machine they set up the barrel.

Q. So that these machines to which I have been referring were for setting up these staves into the barrel, and having arrangements for putting the head on the barrel?

WITNESS: I can answer that last question in regard to that machine. You spoke of a machine for setting up barrels.

Mr. CARTER: That is right.

WITNESS: That we never call a machine; it is not looked on as a machine; it is a fixture, or shop tool, and with it we do certain work. It is an appliance, but not a machine.

Q. Do you know whether it was covered by one of the patents?

WITNESS: It was, you might say, mechanically speaking, a machine, but in the trade we do not recognize it as a machine; it was a shop tool.

Q. I ask you if you do not know that it was one of the things that were covered by the patents under which you were making them. Q. Is not that so?

A. It was one of the appliances used in their plant.

Q. And under the patented machines that you were making. You were making patented machines, were you not?

A. I supposed they had a patent for all they made.

(Mr. WHYTE:)

Q. Mr. Noyes, you were stating on the cross-examination that you had been making machines for the Campbell Barrel Company. Will you state who was the president of that company?

A. During the time that I made the machines, I think Mr. Rosenthal was the first president, and I think Mr. Morton was the second president. At the close of my dealings he was the president. I think Mr. Cook, the secretary and treasurer; I think Mr. Cook was; Grafflin Cook.

93 LESTER ROBINSON, a witness called and sworn for the plaintiff, testified as follows:

I was employed about the first of February of this year, 1895, at the Equitable building, with the Postal Telegraph Company, as a messenger. On that day I took a package from Mr. John Watson, Jr.'s, office down to Mr. Franklin J. Morton. I got the package from Mr. Watson and I carried it to the Firemen's building into Mr. Morton's office. I saw a young gentleman; he signed the ticket and sent me to the old gentleman, and he refused to have it. Who rubbed the signature out again, I am not positive. That ticket I got from a young gentleman who signed it. And then afterwards I went to the old gentleman, who is here sitting there at the table, and recognized by the defendant, and he refused to receive it. Somebody then rubbed out the name that had been put on that ticket. I went there twice on that day.

THOMAS E. MCCREADY, a witness called and sworn for the plaintiffs, testified as follows:

Direct examination:

Knew both parties; visited Mr. Morton's office on one occasion in December, 1894, in company with Mr. Campbell, but I had no conversation with Mr. Morton. Mr. Morton and Mr. Campbell were having a conversation, and the exact purport of that conversation I do not know; portions of it I heard and portions of it I did not hear.

Mr. Campbell suggested, or, in fact, said to Mr. Morton, that "You promised me if I called today,"—and the balance I did not hear; what he promised him I don't know. Mr. Morton's reply to that was, that "Mr. Harrison is out of town, and on his return I will carry out my compact or contract literally," whichever term he used, whether it was compact or contract, I cannot be positive as to that, and that is all I heard or all that occurred so far as my

visit to Mr. Morton's office was concerned, and that occurred, I remember very distinctly.

The witness was asked to look at the paper, there are two papers there, and to tell the court what he knew about these papers; one is dated December 14th and the other is January 30th, 1895. This paper, the paper that is pinned on the receipt here.

The witness stated:

It is dated Baltimore, December 14th, 1894. (Reading.) "The Mt. Airy Manufacturing Company (I presume it is the manufacturing company, because the receipt is so signed), east side of Long dock, will please let the eight machines be stored with you at present, and oblige F. J. Morton, president Mt. Airy Manufacturing Company. Machines at J. Q. A. Holloway's old fertilizing manufactory."

This other paper is dated "Baltimore, Md., January 30th, 1895.

Received from W. H. Harrison, eight machines to be stored in our warehouse for Franklin J. Morton, as per order of Frank-
94 lin J. Morton, dated December 14th, 1894, signed the Mt. Airy Manufacturing Company, N. Du Val."

The circumstances of this transaction were these: Mr. Harrison received this order from Mr. Morton to have these eight machines delivered after having them purchased at an insolvent sale of J. B. Noyes. I purchased the machines there and I afterwards delivered them to the Mt. Airy Manufacturing Company and taken this receipt for them.

Franklin J. Morton is the president of this company.

I bought them at a sale; it was a public sale; at the shop occupied by Mr. Noyes, corner President and Pratt streets.

Cross-examination.

(Mr. CARTER:)

Q. You purchased these machines, Mr. McCready, on the day of the public auction sale, either the 29th or the 30th of January?

A. I did not purchase them on my own account; I purchased them on account of Mr. Morton; I did not pay for them, Mr. Harrison paid for them; Mr. Harrison was the trustee in insolvency. Yes, sir, he was also, from my instructions from him, or my understanding from him, the delegated agent of Mr. Morton to purchase these special machines, but being the trustee, he asked that I would purchase these machines for Mr. Morton, which I did. My relations to him at that time were that of the ordinary kind, and I had a desk room in the office or in the office occupied commonly by him and Mr. Fenton, 205 Courtland street. I bought them in; I have forgotten just the amount, but it was not a great sum; I presume that the cost might have been probably about what old cast iron would have brought, not very much more; I have forgotten the exact amount, but not a great deal of money; the eight machines might have brought $25 or $30, I don't know, possibly less and maybe a little more, I am not positive, but I know it was a

very small sum, that is, compared with the actual value of the plant. I said they were purchased about the price of old iron. They brought about the price of old iron; yes, sir; as near as my recollection serves me, I presume about $25, it may have been less and may have been a little more.

Mr. POE: We have given notice to produce an original letter, and our friends have handed us the letter, which I will now hand to the court:

BALTIMORE, MD., *February* 1, 1895.

Franklin J. Morton, Esq., Baltimore, Md.

DEAR FRIEND MORTON: By the terms of the written contract between us of date December 8th, 1894, the hundred thousand dollars which you therein agree to pay me within ten days from the issuance of the United States letters patent, becomes now due and payable, and I hereby make formal demand for the payment of the money. Kindly let me hear from you at once that we may consult as to the carrying out of the other covenants in the contract.

Sincerely yours, WALTER H. HARRISON.

95 JOHN WATSON, JR., the witness previously examined on behalf of the plaintiff, was recalled and asked the following questions:

(By Mr. FISHER:)

Q. In the course of your testimony the other day, you spoke of an application in blank which had been signed by Mr. Morton and Mr. Campbell for the English patents; please look at the paper now handed you and state whether that is the application, and whether you saw the signatures attached to it?

A. I presented to Mr. Morton an application like this and Mr. Morton signed it in my presence and Mr. Henry Campbell also; that application was delivered by me to my brother in Washington, and has been in his possession since then; upon sending to him for it about a week ago, he forwarded it to me; this, I believe to be the same application, as near as I could say.

Q. Those are the signatures of Mr. Campbell and Mr. Morton?

A. I recognize the signatures of Mr. Campbell and Mr. Morton; yes, sir.

(Here insert application.)

W. P. Thompson & Boult, international patent agent-, 323 High Holborn, London, W. C., and 6 Lord street, Liverpool.

Patents, Designs, and Trade-marks, Act 1883 *and* 1888.

Form A.

Application for Patent.

—— —— do hereby declare that — in possession of an invention, the title of which is —; that — the true and first inventor

thereof; and that the same is not in use by any other person or persons to the best of — knowledge and belief, and — humbly pray that a patent may be granted to — for the said invention.

Dated the — day ——, 189–.

—— ——.
—— ——.

Authorization.

— hereby appoint —— —— to act as — agents in respect of the within application for a patent, and request that all notices, requisitions and communications relating thereto may be sent to such agents at the above address.

— day of ——, 189–.

HENRY CAMPBELL.
FRANKLIN JOY MORTON.

96 The defendant, to maintain the issue on his part joined, introduced the following testimony, viz:

CAREY COALE, being called as a witness on behalf of the defendant, testified as follows:

That he was a clerk in the office of A. B. Morton & Sons, who occupy three rooms on the sixth floor of the Firemen's building, South and Second streets, Baltimore; one is on one side of the passage and the other two on the other side.

Franklin J. Morton composes the firm of A. B. Morton and Sons. The business of Hoffnagle, Platier & Co. is also transacted in these offices. Mr. Morton is a partner in that firm. Some of the partners are located in Paison Deux and in Antwerp, Belgium. Several live in Paison Deux, S. A. Nobody is connected with the A. B. Morton & Sons, except Franklin J. Morton. The A. B. Morton & Sons formerly conducted the shipping business and had the agency of Hoffnagle, Platier & Co., but the latter are now doing their own business in their own name. Mr. Morton is in no business except his private business, under the name of A. B. Morton & Sons, and it was the same in December, 1894. He is not in any mercantile business under that name. I am in the employ of Hoffnagle, Platier & Co., also of Mr. Morton in his individual capacity, with whom I have been five years. I came in 1890. My desk is in the general office, so is Mr. Bolling's, the book-keeper. My brother, Harvey Coale, is a partner in Hoffnagle, Platier & Co.; when in Baltimore he has his office in the large room. He is now in Portland, Maine, where he is superintending the loading of two of our vessels for his firm. When I am in the office I have no particular business except to help; outside of that, I am supposed to do the outside work with my brother. When this case began I was in Portland with my brother, superintending the loading of the ships. I have to attend to the outside work, like assisting by brother, for Hoofnagle, Platier & Co., and then when I am at home in the office I have no particular work. I do anything at all. For Mr. Morton in his private business I do anything he asks me to do.

The assignment, made the 8th day of December, 1894, by Walter H. Harrison to Franklin J. Morton, hereto offered in evidence, is shown to witness, who identified his signature as witness thereto. I was in what you call the large office when I signed it. I was called in by Mr. Morton from the general office and asked to witness signatures, and in accordance with that I witnessed these signatures.

The two papers, that have been shown to the witness, are the contracts in controversy in this case.

The witness is then shown by defendant's counsel the paper dated Nov. 28th, 1894, addressed to the Ætna iron works, and with the signature of Henry Campbell, witnessed by Mr. McCready and Mr. Fenton, and on the back of it is a paper witnessed by Mr. Coale, and on being asked if that was his signature, said it was, and that he believed this paper to which he placed his signature was one of the papers which he had already said he had been called to
97 witness. It must have been, he said, though he did not read those papers, as he was not asked to read them, but that he signed his name to at least two papers when he was first called in. These two contracts of Dec. 8th, 1894, being duplicates, were produced by Mr. Harrison; he then signed them and threw them across the table to Mr. Morton and Mr. Morton read them and signed them. I compared one with the other while he read; I held the other and compared them and found they were duplicates. Mr. Harrison asked him to sign and Mr. Morton said he would not. Mr. Harrison then urged Mr. Morton to sign them and Mr. Morton declined. I thought I was through and left the room. I went back to the general office. I suppose five minutes later or so, Mr. Morton called me back and said he wanted to say that he was going to sign these papers, that Mr. Harrison then presented, but that he was to hold them in trust, and they were not to be acted upon except at his pleasure—at Mr. Morton's pleasure. Mr. Harrison went over the same ground also, and explained as Mr. Morton held both papers, they could not be acted upon until he wished—until Mr. Morton wished; I then witnessed the signatures and left the room.

Q. Then you say Mr. Harrison said the same thing—assented to the same thing?

A. Yes, sir.

Q. And he added, moreover, that as Mr. Morton held both copies they *could not be acted upon except at his pleasure?*

A. That is what he said.

Q. Did Mr. Morton in your presence sign the duplicate?

A. Yes, sir; then Mr. Morton signed them.

Q. What did you do?

A. I witnessed the signatures; there was no one else in the room but us three; I then left the room and went back into my own office.

Q. Have you any personal knowledge of the custody of these papers since; do you know where they have been kept; have you seen them since; I am speaking of your own personal knowledge?

A. Of course I am not sure, but I think for a while they were kept in Mr. Morton's safe; that is all I had to do with them. This transaction I have mentioned was on the 8th of Dec., 1894; I did remain in town, and therefore in the office during the balance—the remainder of that month, December. While I was in town I would be there every day. I should undoubtedly say I was there on the 22nd Dec., 1894. I don't know whether I was with Mr. Campbell and Mr. Harrison that day; I saw Mr. Harrison and Mr. Campbell in the office off and on, but I don't know what day they were there.

Q. Please state what Mr. Morton's habit was with reference to keeping money in his office—I mean bank bills or silver currency, or anything like that.

A. He kept very little in the office; we had no city bills to pay; whenever he wanted to pay anything he would draw a check,
98 and go out and draw the money; otherwise there was just a small balance on hand.

Q. About how much was kept in your safe for current small matters, for ordinary cash matters?

A. I don't know; I imagine about *$30 or so*.

Q. It varied from *$30 or less?*

A. Or sometimes more.

Q. What do you mean by more?

A. *Not much more.*

Q. Somewhere about $30 might be considered an average?

A. Yes, sir; we generally drew checks for $25 or $30 for small change.

Q. You drew checks?

A. Yes, sir; we generally drew checks for $25 or $30 for office use.

Q. Whenever Mr. Morton would get other money it would be by drawing checks on the banks; in how many banks did he keep an account?

A. In two.

Q. What two?

A. The First National bank and the National Mechanics' bank.

Q. Whatever money, other than these small amounts for current change, he would give by drawing checks on these banks?

A. Yes, sir.

Q. Would those checks be entered in the cash book?

A. Yes, sir.

Q. Would all moneys paid out also be entered in the cash book?

A. Everything went through the cash book in the way of money.

Q. Who kept the cash book—who made the entries in the cash book itself?

A. Mr. Morton made the entries in the cash book itself.

Q. Who kept the data from which they were made?

A. How do you mean?

Q. Were any memoranda kept from which the entries in the cash book proper were made?

A. If any memoranda were made he made them.

Q. Who transfered the entries from the cash book to the ledger?
A. Mr. Bolling, the book-keeper.
Q. Mr. Morton kept a separate set of books for his own business, which he did under the name of A. B. Morton & Sons, and which you say was simply his private business, from the books kept for the business of Hoffnagle, Platier & Co.?
99 A. An entirely separate set of books.
Q. Did Mr. Bollinger keep them both?
A. He kept both sets.
Q. You really had no functions as a book-keeper?
A. No, sir; I had nothing to do with them.

H. LEE BOLLING, called on behalf of the defendant, testified as follows:

(By Mr. CARTER:)

Q. In what capacity are you employed in the office of A. B. Morton & Sons, and Hoffnagle, Platier & Co.?
A. Book-keeper, and have been book-keeper for thirteen years this coming February. A. B. Morton & Sons formerly were agents of Hoffnagle, Platier & Co., but now that business is carried on by Hoffnagle, Platier & Co. Mr. Morton's private business is carried on in the name of A. B. Morton & Sons, and the same condition of things existed in 1894 as well as now. There is a separate set of books kept for the separate business of Mr. Morton, which he carries on under the name of A. B. Morton & Sons, from the books in which the business of Hoffnagle, Platier & Co. was entered. I keep both. I keep for Mr. Franklin J. Morton, carrying on his affairs as A. B. Morton & Sons, cash book, day book, journal and ledger, check book and bank books. Mr. Morton keeps his accounts for his private business in the First National bank and the National Mechanics' bank. Hoffnagle, Platier & Co. keep their accounts in the First National and Second National banks. They keep no account in the National Mechanics' bank. Mr. Morton's custom was as to keeping bank bills or coin in his office is that he would keep it in a small tin box. I don't think it ever averaged over from $20 to $25 at a time.
Q. How would he get that money for that purpose from time to time?
A. He would draw a check on the bank.
Q. For those small amounts?
A. Yes, sir.
Q. And where would he keep it—in the safe?
A. In the safe; yes, sir.
Q. In the morning what would he do with that little box in which he kept his money?
A. He would take it from the safe and put it in his desk.
Q. You have said that these small amounts were drawn out by checks; were all the moneys that Mr. Morton had occasion to use drawn out by check; state what his custom was in that regard.

A. Whenever we wanted to pay small bills we would draw a check on one of the two banks.

Q. Do you mean you would hand the check to the customer or go and draw out the money and pay the customer in money?

A. In case we had to pay a bill to a customer and we had no money in the drawer we would be very apt to increase the
100 check a little more than the amount of the bill, so as to keep some in the office after we paid the bill.

Q. If any person to whom Mr. Morton owed something came in and he had not money enough in his box, he would draw a check for that person; is that right?

A. Sometimes he would draw a check for the exact amount and pay the bill, and sometimes he would draw the check for a little more, so he would have a little more money in the office.

Q. How would you get that out of the check you drew?

A. By sending one of the clerks to the bank to get the check cashed.

Q. All the moneys, then, that he used there in the office were drawn out of the banks by checks; is that correct?

A. Yes, sir.

Q. Who kept the cash book in which all his business—in the business I am speaking of—in which the entries were made and the moneys drawn and moneys paid?

A. Mr. Morton kept the cash book.

Q. Who transferred the entries from there to the ledger?

A. I did.

Q. Will you take your cash book for Dec. 22nd, including also the dates prior to that——

Mr. FISHER: In whose handwriting is that?

A. In Mr. Morton's.

Mr. FISHER: Then we object.

The COURT: I sustain the objection.

Mr. CARTER: We will bow to your honor's decision and call Mr Morton and reserve the right to call him again afterwards.

Mr. CARTER: Give me the check books and the bank books.

(The books were produced.)

Q. These two check books, one of which is on the National Mechanics' bank and the other on the First National bank, are they the check books of A. B. Morton & Sons—that is, of Franklin J. Morton, using that name in his business—during the times for which they purport to be the check books?

A. They are.

Q. Do they include the month of Dec., 1894?

A. Yes, sir.

Q. What book is that one you have now?

A. This is the First National bank.

Q. Take the stubbs for Dec., 1894, and say in whose handwriting the entries there are?

A. Mr. Morton's and my own.

Q. Some in yours and some in Mr. Morton's?

A. Yes, sir.

101 Q. Is that the case in both books?

A. The same in both books.

Q. Please look under the date of Dec. 22nd, in the stubs of the check book for the First National bank, and say if you find any stub-book checks drawn on that date from that bank, and in whose handwriting the stubs are?

A. (After inspection.) On Dec. 22 two checks were drawn, one for $40.80; that is in my handwriting.

Q. In whose favor?

A. For farm bills.

Q. For Mr. Morton's farm?

A. Out there in the country; it is farm bills for running the place out in the country—paying bills for the farm; then there is another check drawn by Mr. Morton for $775.

Q. In whose favor?

A. To pay Walter H. Harrison.

Q. Please look at this check now shown you, and say whether you know the signature of A. B. Morton & Sons—is that their signature?

A. (After inspection.) It is.

Q. Is that the check of which there is an entry on the stub to which you referred to?

A. That is the check.

Q. What is the number on the stub?

A. 10070.

Q. And what is the number on the check?

A. 10070.

Q. And that is the check of which that is the stub entered there?

A. That is the check.

Q. Do you know Mr. Harrison's handwriting?

A. I do.

Q. Look on the back of it—is that his endorsement?

A. (After inspection.) It is.

Q. Look at that paper now shown you, and state in whose handwriting the body of it is in—not the signature?

A. (After inspection.) Mr. Morton's handwriting.

Q. And in whose handwriting is the signature?

A. Mr. Harrison's.

Mr. CARTER: This receipt reads—"Received, Baltimore, Dec. 22, 1894, of Franklin J. Morton, $775, which I have received to pay certain bills on account of our present business together, as per accounts. W. H. Harrison."

Q. That is the same date as the date on which the check was given to which I have just referred?

102 A. The same date; yes, sir.

Q. Now, will you please state whether that check is entered on the cash book—that disbursement, and in whose handwriting?

A. It is entered under date of Dec. 22nd, and is in Mr. Morton's handwriting.

Q. Read the entry?

A. F. J. Morton, paid Walter H. Harrison $775.

Q. Will you look at the check book now on the National Mechanics' bank and say whether there is any check drawn on the 22nd of Dec. on that bank?

A. (After inspection.) There is no check drawn on the 22nd of Dec. on that bank.

Q. Will you please state whether these books we now hand you are the bank books of Mr. Franklin J. Morton, doing business as A. B. Morton & Sons?

A. (After inspection.) They are.

Q. They cover what period?

A. They cover the period of 1894.

Q. And part of 1895?

A. Yes, sir; it is up to date.

FRANKLIN J. MORTON, defendant, testified in his own behalf as follows:

Since 1850 I have been living in Baltimore, and at present I have the firm name of A. B. Morton & Sons. The partnership of A. B. Morton & Sons was formed by my father, my brother and myself, and it was formed about 1854. My father is not living, nor my brother either; I am the only surviving member, then, of the firm. I still use the name of A. B. Morton & Sons. I do not carry on a mercantile business in that name more than just to buy some stocks or some little merchandise—I just keep the name. I am not engaged in the active business. I keep the name practically for my own private business. Besides that firm I am a member of the firm of Hoffnagle, Platier and Co., and carry on that business as Mr. Coale described the business of that firm—I heard his testimony. He has correctly described the business. My book-keeper is Mr. Bolling. I keep a separate set of books for my own business, separate from that of Hoffnagle, Platier & Co. He is my book-keeper for both purposes. The location of my office has been described. I first became acquainted with Mr. Walter H. Harrison, the plaintiff here, about the year 1885; he was introduced to me and my brother through Mr. Hiram Woods. He had a manganese property, on which he had an option, down in Nova Scotia, and Mr. Hiram Woods introduced him to us and Mr. Cook in reference to it. Nothing came out of it. My brother, Mr. Harrison and Mr. Cook, those three and an expert mining expert went to Nova Scotia in connection with it, but nothing came of it. After that I met Mr. Harrison, about Dec., 1891. He had a claim against Mr. Thompson in New York, about which I will explain; I was coming down German
street one day and he met me—at the corner of South—
103 and he appeared to be down-spirited and down-hearted, and he was telling me about the troubles he had in regard to some business with other people—they had not treated him right and he was discouraged like, and he excited my sympathy and I

told him I would be his friend. I listened to what he had to say; he seemed to be in such a state of mind and so depressed that I told him I would be his friend. He came to my office after that and brought a claim against this man named S. H. Thompson, I think is his name, and I told him I would see about it, and I took it up to my attorney and consulted with him, and he agreed to take it in charge.

Q. Look at that receipt and say whether the signature to that is the signature of Mr. Harrison?

A. (After inspection.) It is; I recognize that.

(Counsel then read receipt dated Baltimore, Dec. 19th, 1891, from Walter H. Harrison.)

BALTIMORE, *Dec.* 19, '91.

Received of Franklin J. Morton two hundred and fifty dollars on account of assignment and agreement made this day between the said Morton and Walter H. Harrison, it being distinctly understood that only one-half of interest being taken by him in the one thousand dollars mentioned in the agreement dated Dec. 18th, 1891, with the privilege of accepting or rejecting the paying the other half, say five hundred dollars, in the next 10 days, of the above payment.

—— ——. [SEAL.]
—— ——. [SEAL.]

F. J. Morton pays $250.
S. G. B. Cook pays $250.

Q. Please look at the paper now handed you and state whether or not that is your signature?

A. (After inspection.) Yes, sir.

(The counsel then read the agreement dated March 24th, 1893.)

Agreement Made This 24th Day of March, 1893, Between Walter H. Harrison and Franklin J. Morton.

The said Walter H. Harrison having endorsed over to Franklin J. Morton, for a valuable consideration and without recourse, a promissory note for ten thousand dollars ($10,000.00), made to him by Stephen J. Thompson, and having also assigned to said Franklin J. Morton a certain judgment recovered in the supreme court of the county of New York, against said Stephen J. Thompson, for the sum of ten thousand dollars ($10,000.00), the said Morton has agreed and does hereby agree to prosecute and do what he can to recover the money due on said promissory note, and also by execution or such other means as will be effective to that end, to prosecute and recover the amount due on said judgment, and out of the moneys recovered upon said note or said judgment—first, to repay to himself the sum of eight thousand five hundred dollars, the amount of the money by him paid for said note and judgment, together with interest
104 thereon from the time of payment, and all expenses incurred in the collection of said money or paid out or disbursed in, about or in connection with the recovery of said judgment and said

promissory note; and thereafter to pay to Henry Stockbridge, for his professional services, in collection of said moneys, one-fourth of the net balance of the moneys collected; and he agrees to pay two-thirds of any balance then remaining to Blanche I. Harrison, the wife of said Walter H. Harrison, or her legal representatives.

FRANKLIN J. MORTON.

Witness:
L. FRINK.

Q. Now look at the agreement handed you and state whether or not that was executed on the date it purports to bear date; look at the signature; you need not read it all?

A. (After inspection.) Yes, sir; that's my signature.

(Counsel then read agreement dated May 8th, 1893.)

$10,000.00. WASHINGTON, D. C., *June 2d*, 1893.

At sight pay to the order of myself ten thousand ($10,000) dollars. Value received, and charge the same to account of Franklin J. Morton.

W. H. HARRISON.

Baltimore, Md.
(Firemen's building.)

Written across face: Accepted if accompanied with deed of Jordan Mountain property from Fred. W. Stockton and wife, duly registered.

FRANKLIN J. MORTON.

This agreement, made and executed this eighth day of May, in the year one thousand eight hundred and ninety-three, by and between Franklin J. Morton, of Baltimore city, in the State of Maryland, of the first part, and Walter H. Harrison, now residing in said city and State, of the other or second part: Witnesseth, that for and in consideration of divers good and valuable considerations from the parties hereto, each to the other respectively moving, the said Franklin J. Morton and Walter H. Harrison have agreed and do hereby agree each with the other in manner and form following, that is to say:

1. The said Franklin J. Morton agrees to advance to the said Walter H. Harrison the sum of five thousand dollars cash.

2. The said Walter H. Harrison agrees to proceed forthwith to the province of New Brunswick, and there to purchase the property known as the "Jordan Mountain manganese mining" property, consisting in part of lands in fee-simple and in part of mining rights or licenses mentioned and described in an option and contract of sale from Frederick W. Stockton to the said Walter H. Harrison, and upon the completion of the said purchase to cause the papers transferring the title thereto to be so drawn or made out as to vest the said property in the said Franklin J. Morton absolutely, free from all claims whatsoever; it being further mutually understood and agreed by and between the parties hereto, that of the said pur-

chase-money, ten thousand dollars ($10,000.00), is to remain upon mortgage, but if that arrangement shall not be possible to be
105 perfected, then, and in that event, the deeds conveying the said property shall be made out and fully executed and deposited by the vendor with a draft for said sum of ten thousand dollars ($10,000.00), at sixty days, in some bank for transmission to Baltimore, which said draft the said Franklin J. Morton hereby agrees to accept, so soon as he shall be satisfied of the legality of the execution of the said conveyance or conveyances, and meet at its maturity.

3. Inasmuch as in the event of the said Franklin J. Morton having to meet the said draft above mentioned of ten thousand dollars ($10,000.00), he will have advanced to the said Harrison the sum of twenty-three thousand and five hundred dollars ($23,500.00), the said Walter H. Harrison hereby agrees that out of the first moneys which shall be received by him, or his attorneys, Col. Robert F. Hill, of Washington, D. C., and Henry Stockbridge & Son, of Baltimore, Md., for him, whether from the sale of the said manganese mining property of any portion of it, or from any other source, there shall be repaid to the said Franklin J. Morton the said sum of twenty-three thousand five hundred dollars ($23,500.00), together with the interest thereon up to the time of such payment, at the rate of six per cent. per annum; and further, that out of the net profits to accrue from the said Jordan Mountain manganese property, by which is meant the profits over and above the necessary expenses incident to the purchase, and over and above the sum of twenty-eight thousand five hundred dollars ($28,500.00), the said Harrison will pay, or cause and procure to be paid to the said Franklin J. Morton, ten per cent. of such profits, whether in stock or in cash, according to the form in which the said profit shall be realized.

4. And the said Morton agrees that upon the payment to him of the said sum of twenty-three thousand five hundred dollars, together with the interest thereon as aforesaid, he will convey or cause and procure to be conveyed the said property so as aforesaid conveyed to him, to such person or persons, or body corporate, as shall be designated by the said Walter H. Harrison.

5. And it is further understood and agreed by and between the parties hereto, that the said Walter H. Harrison shall cause to be issued upon his life a policy of insurance, in the sum of thirty thousand dollars ($30,000.00), in which the said Franklin J. Morton shall be named as the assured by the Connecticut Mutual Life Insurance Company, or other well-known and sound insurance company, under which, in the event of the death of the said Walter H. Harrison before the close of the transactions relating to the said Jordan Mountain manganese mining property, the said Franklin J. Morton shall be entitled to, and shall reimburse himself the said sum of twenty-three thousand five hundred dollars ($23,500.00), or such part of it as shall be then due and owing, together with the interest thereon as aforesaid, and the balance of the proceeds of the said policy shall be a trust fund in the hands of the said Morton, to

be paid over to Blanche I. Harrison, wife of said Walter H. Harrison, individually.

6. And the said Franklin J. Morton agrees that upon the
106 receipt of the said sum of twenty-three thousand five hundred dollars ($23,500.00), together with the interest as aforesaid, prior to the death of the said Harrison, he will, by apt assignment, transfer all his interest under the said policy to such person as the said Harrison shall designate, and that in the event of the death of the said Harrison and the repayment of the said sum out of the proceeds of the said insurance, then he will by proper conveyance transfer the said Jordan Mountain manganses mining property to the legal representatives of the said Walter H. Harrison.

In witness whereof, the parties hereto have hereunto set their hands and affixed their seals in triplicate the day and year first above written.

—— ——. [SEAL.]
—— ——. [SEAL.]

Test: ROBERT H. HILL.
H. STOCKBRIDGE, Jr.

Received back the sight draft of $10,000, dated June 2, '93; accepted by F. J. Morton, now cancelled.

FRANKLIN J. MORTON.

June 4, '93.

Written across agreement are the following words:

Cancelled July 4, '93.

W. H. HARRISON.
F. J. MORTON.

Q. Look at the draft I now hand you and state whether that was drawn by Mr. Harrison at that time—look at that signature which appears to be erased.

A. (After inspection.) Yes, sir; this is his signature.

Mr. Gans: This agreement of the 8th of May was afterwards rescinded, but it tells the condition of things at that time; and there is a draft pinned on it drawn on the 2nd day of June, 1893, for $10,000 and accepted by Mr. Morton and the signatures are all erased; there is also on it the word "Cancelled, July 21, 1893, W. H. Harrison and F. J. Morton;" also Received back the sight draft of $10,000, dated June 2nd, 1893, accepted by F. J. Morton, now cancelled; signed by Mr. Morton July 4th, 1893.

Q. Now look at what I hand you and state whether or not you identify that as Mr. Harrison's signature.

A. (After inspection.) Yes, sir.

(Counsel then read receipt dated Baltimore, May 9th, 1893, for $5,000, and signed by W. H. Harrison.)

(Here insert it.)

$5,000.00. Baltimore, 9 *May*, 1893.

Received of Franklin J. Morton five thousand dollars, being the

cash payment of that sum mentioned and set out in clause 1 of an agreement between the said Franklin J. Morton and Walter H. Harrison, bearing date the 8th day of May, 1893.

WALTER H. HARRISON.

107 Q. Look at what I now hand you and say in whose handwriting are the signatures.

A. (After inspection.) My signature and Mr. Harrison's.

(Counsel then read agreement dated July 21st, 1893, also bill of sale attached to same, dated July 21st, 1893, from Harrison to Morton.)

BALTIMORE, *July* 21, 1893.

This is to certify, that whereas the contract entered into by Franklin J. Morton and Walter H. Harrison, under date of May 8, '93, has been as yet unfulfilled, and it has been decided by these two parties to the same to make a new agreement and contract in furtherance of the object specified in the said agreement of May 8th; now, therefore, we, Franklin J. Morton and Walter H. Harrison, do cancel the contract of May 8, '93, and do hereby enter into a new contract and agreement, as follows:

Franklin J. Morton having paid Walter H. Harrison, on the 9th May, 1893, the sum of $5,000.00, and on June 2, '93, $300.00, and on July 7, '93, $400—as per receipts, he now agrees to pay to Walter H. Harrison an additional amount, say $5,200.00, making in all, under this agreement, ten thousand nine hundred dollars, together with the 6 mos. premium on Mr. W. H. Harrison's life ins. policy for thirty thousand dollars when it shall be paid by F. J. Morton to the agent of the Conn. Mutual Life Ins. Co., for the purpose of furthering the purchase of the Jordan Mountain manganese property and adjacent properties by W. H. Harrison, who is now acting in conjunction and with the assistance of other parties in Baltimore, with whom he has made arrangement to act in the place of F. J. Morton in closing the purchases of the manganese properties; Walter H. Harrison has given a bill and receipt for sixteen large and small oil paintings, now sent by him to Franklin J. Morton's house on Charles St. Ave., and has ordered Mr. Nicodemus to hand over to Mr. Morton, when received, the policy of life ins. for $30,000.00 on Mr. Harrison, in favor of Mr. Morton, taken out in the Conn. M. L. Ins. Co., or other good and well-known company, for security in case of any mishap that should occur to Mr. Harrison while prosecuting the business, but said policy to be given back to Mr. Harrison when all advances and settlement are made and paid to Mr. F. J. Morton, the same to be done with the pictures.

It is further agreed, that these advances, say $10,920.00 and the life ins. premium, shall be returned when demanded by F. J. Morton, at his option, and out of the first funds that shall come into the possession of Walter H. Harrison from whatever source, and for the use of the funds, W. H. Harrison agrees to pay to F. J. Morton interest at 6 % per year for the time they are used, and a bonus of $5,000.00 in cash, all at the time of settlement of cash advanced.

It is also understood and agreed that the $8,500.00 paid by F. J. Morton to W. H. Harrison to purchase of him the note of $10,000.00, and judgment of $10,000.00, both due by S. J. Thompson, of New York, is another matter, and contained in another agreement of M'ch 24, '93, yet to be carried out, by and through H'y Stockbridge, Sr. It is also understood and agreed that in case of any mis-
108 hap to W. H. Harrison and the life ins. policy shall be collected by F. J. Morton, then the $8,500.00 and the $10,900.00, together with the life ins. premium paid, interest account and bonus of $5,000.00 spoken of, shall all be deducted by F. J. Morton to reimburse him from the amount received from the life ins. company, and the balance remaining shall be held in trust for and paid to Mrs. Walter H. Harrison herself, and she is also to receive back, at the same time, the pictures from F. J. Morton, and then the agreement of M'ch 24, '93, regarding the Thompson note and judgment (if not previously been carried out), shall be carried out to completion if possible, otherwise these two, note and judgment, shall be returned to Mrs. W. H. Harrison.

FRANKLIN J. MORTON. [SEAL.]
WALTER H. HARRISON. [SEAL.]

Witness: WALTER H. HARRISON, JR.
Witness: J. NEWPORT POTTS.

BALTIMORE, *July* 21*st*, 1893.

Franklin J. Morton, Esq., Dr. to Walter H. Harrison.

To 16 oil paintings (large and small)..... $15,900 00

Received payment in full by cash, July 21st, 1893.
WALTER H. HARRISON.

The above sale by Walter H. Harrison to Franklin J. Morton, of the 16 oil paintings, it is hereby agreed and understood by and between them that Mr. Morton pays Harrison $10,900.00, and the other $5,000.00 is a bonus for buying same, and it is hereby agreed and understood that if Harrison returns to Mr. Morton the $15,900.00 within six months from date or sooner, Mr. Morton (*at the option of Harrison), will return the 16 oil paintings to him.

* Erased before signing.

FRANKLIN J. MORTON. [SEAL.]
W. H. HARRISON. [SEAL.]

Q. Now look at those receipts handed you. Those are the receipts for money referred to?

A. (After inspection.) Those are his receipts, his signature.

(Counsel then read receipt dated June 2nd, 1893, for $300, from W. H. Harrison to Franklin J. Morton.)

Also receipt dated July 7th, 1893, for $400, from same to same.

Also receipt dated July 24th, 1893, for $5,200, from same to same.

(The receipts dated June 2, 1893, and July 7, 1893, were not given to the clerk by the counsel.)

109 *Receipt of July 24th, 1893.*

$5,200.00. BALTIMORE, *July* 24, 1893.

Received of Franklin J. Morton fifty-two hundred dollars, being the cash payment of that sum mentioned and set forth in agreement of July 21, 1893, between Franklin J. Morton and Walter H. Harrison to be paid, and now received by me this day.

WALTER H. HARRISON.

Witness:
BLANCHE I. HARRISON.

Mr. GANS: The papers read recited the receipt of $8,500; we will now offer the vouchers to show that $8,500, in order to keep the matter clear in regard to the Thompson transaction.

Counsel then read receipt from W. H. Harrison to Franklin J. Morton for $250, dated Dec. 19, 1891, which had already been offered in evidence.

(By Mr. GANS:)

Q. Please look at the paper which I now hand you.

A. (After inspection.) That is Mr. Harrison's signature.

Counsel then read receipt dated Jan. 14th, 1892, for $338.

BALTO., MD., *Jan. 14th*, 1892.

Received of Franklin J. Morton three hundred and thirty-eight dollars on account of the other one-half interest in the one thousand dollars mentioned in the agreement dated Dec. 18, '91, made between Franklin J. Morton and Walter H. Harrison, and it is understood and agreed that the one-half interest in the one thousand dollars having been previously paid by F. J. Morton and Samuel G. Cook on Dec. 19, '91, under the agreement; now Franklin J. Morton has this day, Jan'y 14, '92, paid to me this further sum of three hundred and thirty-eight dollars on account of the other one-half interest in the one thousand dollars mentioned in agreement of Dec. 18, '91, and Franklin J. Morton and Sam'l G. Cook have the interest of $500 and $338, making $\frac{838}{1000}$ proportion in the benefits coming to the advancement of the one thousand dollars under the agreement dated Dec. 18, '91.

——— ———. [SEAL.]

Mr. GANS: There is another amount for $125, under date of Feb. 11, 1892, that we cannot find the voucher for.

Counsel also read receipt dated March 10th, 1892, for $50.

Also March 15th, 1892, for $500.

Mr. GANS: We only claim $250 out of the $500 item, as $250 was afterwards paid to Mr. Morton.

Mr. GANS: August 17th, there is an item of $1,000, but we have not the receipt for that at hand just now; that is all for 1892.

Counsel then read receipt dated Jan. 6th, 1893, for $909.

Also receipt dated Feb. 13th, 1893, for $250.

Also Feb. 21, 1893, for $560.

Mr. POE: Won't you tell us as you go along in whose handwriting the body of those receipts is?

Mr. GANS: In whose handwriting is that (indicating)?

The WITNESS: My handwriting.

Counsel also read receipt dated Feb. 23rd, 1893, for $1,000, and stated the body of it was in the handwriting of Mr. Morton.

Mr. GANS: The next is in the shape of a draft, and reads as follows:

BALTIMORE, *February 24th*, 1893.

Without grace, 27th February, instant, pay to the order of C. C. Cannon, cashier, $1,500, value received. Drawn by W. H. Harrison; addressed to F. J. Morton, with the stamp of the bank on the back of it.

Q. Whose handwriting is that in?

The WITNESS: I can't say; I don't recognize it.

Mr. CARTER: It is not yours?

A. No, sir.

Mr. FISHER: It is not Mr. Harrison's?

Mr. GANS: The signature is Mr. Harrison's.

Mr. CARTER: It is endorsed by the cashier paid on the 27th of Feb.

Mr. POE: What else is there?

Mr. CARTER: To F. J. Morton at office of Henry Stockbridge, Cohen's law building; it is payable there.

Mr. GANS: We offer also the next, which is in the shape of a draft and dated on the 24th of Feb., 1893, payable on the 6th of March, 1893, for $1,000.

Counsel then read the draft.

Mr. GANS: The next is also a draft, dated the 24th of Feb., 1893, payable March 13th, 1893, for $593.

Counsel then read the draft.

Mr. CARTER: Those three drafts make $3,093?

Mr. GANS: Yes; the next is March 6th, 1894.

Counsel then read receipt from Mr. Harrison to Mr. Morton, dated March 6th, 1894, for $230.

Mr. FISHER: In whose handwriting is that?

Mr. CARTER: The body of it is in Mr. Morton's.

Mr. GANS: The next is in November—we will call it the 1st of Dec., 1894, and amounts to $200. I will have to explain that; that is money paid to a New York firm of lawyers, Leavitt, Wood & Keith, through Mr. Stockbridge, and I will read first the letter of Mr. W. H. Harrison in regard to that; they had the Thompson matter in charge; the letter is as follows:

Counsel then read letter from W. H. Harrison dated Nov. 14th, 1894.

(Here insert it.)

111 NEW YORK, *Nov. 14th*, 1894.

FRIEND MORTON: Have just left Mr. Attelbuy, of the firm of Leavitt, Wood & Keithe, att'ys-at-law, 111 Broadway, who have the Thompson matter in charge for you through Messrs. Stockbridge & Son; they asked for a fee of $200, which I promised would be forwarded them by tomorrow's mail. Have written Mr. Stockbridge by this mail; business here is looking bright.

Yours sincerely, W. H. HARRISON.

P. S.—I have a man now out with the summons for "Thompson," who will shoot him on sight.

W. H. H.

Also letter from Leavitt, Wood & Keith, to Mr. Stockbridge, dated Dec. 3rd, 1894, acknowledging the receipt of check for $200.

DECEMBER 3, 1894.

Henry Stockbridge, Jr., Esq.

DEAR SIR: We have received your letter of the 1st inst. with cheque enclosed for $200 to be applied in the suit against Stephen J. Thompson. In regard to the remainder of your letter, we beg to say that we have three cases against Mr. Thompson.

First, an action on a judgment against Stephen J. Thompson in favor of Walter H. Harrison, recovered in Baltimore. The judgment in this State was for $10,017.15. We issued execution and the execution has been returned unsatisfied. This judgment has been assigned to Mr. Morton. Second, an action in favor of Mr. Morton against Thompson upon two causes of action, a note for $10,000 to the order of Walter H. Harrison endorsed to the plaintiff, and a judgment in favor of Harrison for $10,007.85 recovered in Baltimore. This judgment was assigned to the plaintiff. Third, an action in favor of Mr. Harrison against Thompson upon two causes of action, a judgment for $59.60 recovered in Baltimore by the plaintiff, and insurance premiums paid by Mr. Harrison upon a policy on Mr. Thompson's life. These premiums amount to $927, from which is to be deducted $40 received from the company in dividends, leaving $887 due, and making the total sued for in this action $946.60.

Yours truly, LEAVITT, WOOD & KEITH.

The above is only portion of letter of Dec. 3, 1894.

Q. This is your check, is it not (indicating)?

The WITNESS (after inspection): Yes, sir.

Counsel then read check dated Dec. 1st, 1894, on the First National bank, to the order of Henry Stockbridge, for $200, and signed by A. B. Morton & Sons, and on the back endorsed to the order of Leavitt, Wood & Keith by Henry Stockbridge, Sr.

Mr. GANS: These are all the vouchers at present which we regard as part of the Thompson matter.

The COURT: Do you make them foot up $8,500?

112 Mr. GANS: No, sir; even if we prove them all up it makes $8,480 as I add them up. I will now take up the vouchers on the Jordan manganese scheme. We have already produced the receipt for the 9th of May, 1893, for $5,000, which I will read.

Counsel then read receipt for $5,000, dated May 9, 1893.

Also receipt dated June 2nd, 1893, for $300, previously read.

Also receipt of July 7th, 1893, for $400, previously read.

Also receipt of July 24th, 1895, for $5,200, previously read.

(By Mr. GANS:)

Q. Please look at this note dated August 22nd, 1894, for $2,500.

A. (After inspection.) That is my handwriting in the body, and that is his signature.

Note was read by counsel.

Mr. GANS: There was one item on the Thompson matter for which we had no voucher at the time we reached it, namely, the item of $1,000 on August 17th, 1892; I now offer this check.

Counsel then read check dated August 17th, 1892, drawn on the First National bank to the order of Walter H. Harrison for $1,000 by A. B. Morton & Sons, and endorsed on the back by Mr. Harrison.

Mr. GANS: That proves all the items with respect to which we said we had vouchers. Now, if the court please, you recollect that in talking about the Jordan manganese scheme, there was a note of $2,500, dated August 22nd, that I asked your honor not to count it in until we offered proof with regard to it. Now, the proof is the agreement which I will now read to the court, dated August 22nd, 1894, signed by both Walter J. Harrison and Franklin J. Morton.

(Agreement read.)

BALTIMORE, *22nd August*, 1894.

Col. R. F. Hill, Washington, D. C.

H. Stockbridge & Son, Baltimore, Md.

GENTLEMEN: You will, out of any moneys which shall come to the hands of you or either of you for my account, over and above your or either of your fees and expenses, pay over to Franklin J. Morton, of Baltimore, Md., any and all sums that shall be necessary to repay to the said Franklin J. Morton the various sums of money advanced or paid by him to me or for my account, together with interest thereon, upon the said Morton's reassigning to you the various collateral- which have been by me at various times delivered or transferred to him or which may be held by him for my account, whether such collateral be real or personal property; and in the event of a partial payment, only the same to be made with a return of the corresponding return of the proper proportional part of the collateral.

Respectfully, &c., WALTER H. HARRISON.

113 Service of copy admitted, and order accepted this 22nd August, 1894.

ROBERT F. HILL.
H. STOCKBRIDGE & SON.

BALTIMORE, MD., *August 23rd*, 1894.

Col. R. F. Hill, Washington, D. C.; H. Stockbridge & Son, Baltimore, Md.

GENTLEMEN: With reference to the order given under date of August 22, 1894, signed by Walter H. Harrison, and accepted by you, while the same is general in its terms, it was and is hereby declared to have been the intent that the insurance policy No. 197,258, in the Connecticut Mutual Life Insurance Company, upon the life of Stephen J. Thompson, for $10,000, and the judgment rendered in the Baltimore City court, December 14, 1891, for $10,000, with interest from December 11th, 1891, and costs, in favor of Walter H. Harrison against said Stephen J. Thompson, are, as set out in agreement of that date, to be surrendered and returned to the said Walter H. Harrison upon receipt of the sum of two thousand five hundred dollars, for which the same were delivered as collateral upon said date of August 22nd, 1894; and that any sums which may be raised by or for said Walter H. Harrison upon the said insurance policy and judgment, or either of them, over and above the said sum of two thousand five hundred dollars, are to be paid over to the said Walter H. Harrison or such person as he may direct.

Yours respectfully, FRANKLIN J. MORTON.

Your honor will therefore find that the judgment against Thompson, in Baltimore—prior to this time, we have mentioned a judgment in New York against Thompson for the same amount, but the judgment against Thompson, in Baltimore, and the $10,000 policy on the life of Thompson goes with this, as collateral security, and I ask your honor to note that, because we have certain payments of premiums that I will introduce afterwards on that very policy as part of the set-off.

COURT: This is dated 1893.

Mr. GANS: No, sir; it is dated 1894, August 22nd, 1894.

Mr. FISHER: And the witnesses are who; read the witnesses.

Mr. GANS: Witnesses, Robert F. Hill and H. Stockbridge, Jr. Now, there appears on that below, "for value received," &c., footnote read. "Witnessed by Wm. H. Jones, notary public."

That makes the amount with respect to that Jordan manganese matter, $13,400, we make it.

Now, to that, if the court please, under another heading, life-insurance policies, sums amounting to $4,748.28, and I will give them to your honor in detail.

The first one is the sum of $750, September 29th, 1893, and
114 the paper is a note dated Baltimore, Sept. 25, 1893. On Friday, September 29th, 1893, I promised to pay F. C. Nicodemus $750, for value received, Franklin J. Morton, and then on September 29th, received the above amount, F. C. Nicodemus, per —— ——. That was the payment of the premiums on this insurance policy. Was that $750 paid to Mr. Nicodemus?

A. That was the premium on Mr. Harrison's life policies.

(Mr. CARTER:)

Q. On $30,000 in the Connecticut. He got it in the Equitable instead of the Connecticut?

A. Yes, sir.

(Mr. GANS:)

Q. Now the next is September 25th. January 27th, 1894, the sum of $747.37. That is in the shape of a note, if the court please, and it reads, "Baltimore, September 25th, 1893. $747.37. Four months after date, I promise to pay to the order of F. C. Nicodemus, $747.37. Franklin J. Morton." On the back is endorsed, F. C. Nicodemus, and the stamp, "Received payment, James Scott, cashier." That is the four months' note, as it was paid January 27th, 1894. Now the next, $762.01, March 28th, 1894, that was the payment of a note dated the same time, September 25th, 8 months after date, I promise to pay to the order of F. C. Nicodemus, $762.01, endorsed by Nicodemus, and stamped by James Scott, cashier. The next is September 21, 1894, the sum of $2,214.00, which is the annual premium, and reads as follows: "The Equitable Life Insurance Society of the United States, 120 Broadway, New York, &c., $2,214, being the annual premium due Sept. 22, 1894, upon policy No. 663,596, on the life of W. H. Harrison," and we offer the policy in evidence for the purposes of identification of this sum. The policy is in the Equitable, the amount is $30,000, the number is 663,596, as stated in the receipt. Mr. Morton, in going along the contract, stated that there should be a policy in the Connecticut Mutual or some other company.

Mr. POE: Was there a policy on the life of Thompson in the Connecticut Mutual?

Mr. GANS: Yes, sir; I am coming to that now. The next one is December 22nd, 1894, the sum is $274.90, and this is a receipt of Nicodemus. "Received of Franklin J. Morton, $274.90, for premium on policy No. 197,258, Stephen J. Thompson. Payment made for Walter H. Harrison, F. C. Nicodemus." It is dated December 31st, instead of December 24th; that makes altogether, as we make it, if the court please, $4,748.28 paid on account of premium.

Mr. GANS: Who, while we are on this subject, if the court please, we have made an additional payment of $2,214.00 on this $30,000.00 policy, since the bill of particulars was filed, because it fell due since that time. We offer it in evidence now, subject to whatever exception my brothers have, with an application to amend the bill of particulars hereafter.

Mr. POE: It goes in subject to exception.

Mr. GANS: Certainly, with the application to amend the bill of particulars to cover it.

115 Mr. FISHER: What is the date of it?

Mr. GANS: The date is September 22nd, 1895; and the sum is $2,214, the same as the other precisely. That concludes the items for the insurance matter. Now we have an item, if the court please, of $2,500 on the North Carolina gold mining property, No-

vember 1st, 1894. We first offer Mr. Harrison's note of that date, which reads, "Baltimore, November 1st, 1894. Sixty days after date I promised to pay to the order of Franklin J. Morton $2,500 with interest thereon at the rate of 6% per annum. Signed, Walter H. Harrison." Now the agreement covers that note.

Mr. POE: In whose handwriting is the body of the note?

Mr. GANS: In Mr. Stockbridge, Jr.'s, handwriting.

A. Yes, sir; that is right.

Mr. GANS: Now, you made a supplemental agreement on the 1st day of September, 1894, which I will read to the court:

(Agreement read.)

(The agreement of September 1, 1894, was not given to the clerk by the counsel to insert in this record.)

Mr. FISHER: Who witnessed that, Mr. Gans?

Mr. GANS: Henry Stockbridge, Jr., the same witness as the handwriting on the note. Now, if your honor please, we will take another heading, the Maryland Avenue property, and I will ask my brother Stockbridge to state the items of that, they are quite numerous, and as he was the counsel at that time, he knows about the tax bills, and things of that sort.

Mr. STOCKBRIDGE: I will ask you gentlemen to produce, if you have it, the original paper signed by Mr. Franklin J. Morton, dated December 22, 1893, with reference to certain property on Maryland avenue.

Mr. FISHER: Is it a contract?

Mr. STOCKBRIDGE: It was a declaration of trust practically upon the part of Mr. Morton, which was signed only by Mr. Morton. (The paper handed to Mr. Stockbridge.)

Mr. STOCKBRIDGE:

Q. Mr. Morton, did you, in the summer of 1893, purchase any property upon Maryland avenue? If so, what property, and for whom bought, and on what account?

A. I bought the Maryland Avenue house, No. 1823, of Mr. Banks—Mr. Wm. Banks.

Q. Do you know Mr. Banks' signature, Mr. Morton?

Mr. FISHER: We will not dispute the signature.

Mr. STOCKBRIDGE: This is as follows: (Receipt of September 2nd, 1893, for $400, read.) Do you know Mr. Harrison's signature? I will show you this paper in one minute.

A. Yes, sir.

Q. This is an account rendered to Franklin J. Morton after the purchase of the Maryland Avenue property, an account with Henry Stockbridge, attorney-at-law. (Account read.) This is
116 a bill rendered for the various items amounting to $417.67, with a credit upon the date of October 7th, 1893, for $400, and finally received March 5th, 1894. Mr. Morton, who occupied it, if you know?

A. Mr. Harrison.

Q. Now, look at this paper, and state in whose handwriting the signature is.

A. Walter H. Harrison.

Q. I will read it. (Receipt dated Baltimore, Jan. 12th, 1894, read.) Did or not Mr. Morton, subsequent to that, *you* pay out any moneys at the request of Mr. Harrison for this account?

A. I did; a number of bills for repairs.

Q. Look at the signature to that paper and state whose it is.

A. That is my signature.

Mr. STOCKBRIDGE: This is an agreement; the witness has identified his signature, and it is dated December 22nd, 1893.

Mr. POE: This is the declaration of trust, of which we gave you the original.

Mr. STOCKBRIDGE: Yes, sir; the property on the east of Maryland avenue, south of North avenue. (Agreement read.) The amount, $641.00, is interlined in ink, the balance being all typewritten. And this paper was delivered to whom? The original, I mean, of this paper.

A. It must have been delivered to Mr. Harrison; it was for his benefit.

Q. And produced by him here today?

Mr. POE: Yes; we produced it.

Mr. STOCKBRIDGE: Please look at the date of that paper. Your honor will observe it is dated December 22nd, 1893, declaring advances at that time made in excess of $600.

Mr. CARTER: $631.40.

Q. Please look at this bill and state whether it was paid by you. And if so, at whose request?

A. I paid it by the request of Mr. Harrison.

Q. This, without reading the details, is a bill of Wm. E. Wood & Company, February 6th, 1894, to Walter H. Harrison, 1823 Maryland avenue, for sundry enumerated repairs amounting to $64.75, marked as paid February 6th, 1894. The next account I will read to your honor is a receipt of February 6th, 1894, to Wm. H. Harrison, per F. J. Morton, $125, which I credit $125 on bill due from Harrison, dated January 1st, 1894, amounting to $249.85, and leaving a balance of $124.85, Robert Hughes. Did you pay that bill; and if so, at whose instance and request, Mr. Morton?

A. I paid it at the request of Mr. Harrison.

Q. In whose handwriting is the signature to that, Mr. Morton?

A. Mr. Harrison.

117 Q. Before passing from this, Mr. Morton, can you tell his honor who Robert Hughes is, and for what that bill was rendered?

A. He is a stove man; a plumber.

Q. It was for work done where?

A. Work done at that house, No. 1823 Maryland avenue.

Q. The witness has identified the signature to a letter which I will read, dated February 9th, 1894. (Letter read.) Mr. Morton, look

at the bill of Swain & Banks, and say whether or not that is the account referred to in this letter; if so, what you did in regard to it?
A. I paid it according to that request.
Q. In accordance with the written request?
A. Yes, sir.
Q. In whose handwriting is the signature to that receipt?
A. Mr. Harrison's.
Q. I will read it. (Receipt of February 16th, 1894, $20, read.)
Mr. FISHER: In whose handwriting is that?
A. My handwriting.

(Mr. POE:)

Q. And you gave the date?
A. February 16th, 1894.
Q. Now, in whose handwriting is that signature, Mr. Morton?
A. In Mr. Harrison's.

(Receipt dated Baltimore, March 13, 1894, $22.51, to pay claim of Pascal Bologne, carpenter, read.)

Q. Do you know where this receipt came from, Mr. Morton?
A. That is in settlement.
Q. That is the receipt for the $22.00 mentioned in this receipt here of Mr. Harrison's?
A. Yes, sir; there was a suit brought and compromised.
Q. In whose handwriting is the signature to this receipt?
A. Mr. Harrison's.

(Receipt of March 26th, 1894, of $75.00, to Robert Hughes, read.)

Q. Your honor will remember when Mr. Hughes' receipt was read, there was a balance said to be left open, and this goes in as a part of that balance. In whose handwriting is the signature to that receipt?
A. Mr. Harrison's.
Q. Receipt of April 2nd, 1894, $30.00, read. Do you know the signature to that receipt?

(Receipt of April 1st, 1894, of Charles D. Fisher, for 6 months' ground rent, $90, read.)

Q. In whose handwriting is the signature upon that order?
A. Mr. Harrison's.
118 Q. Here is an order dated Baltimore, Md., May 18, 1894, to Robert Hughes $60.00. (Order read.) Now, Mr. Morton, look at these two accounts and state what these bills are. They are tax bills, but state the property they are upon and for what years?
A. 1893 and 1894 taxes on the house 1823.
Q. These are the tax bills; one for $71.16 for 1893, and $69.50 for 1894, upon lot and improvements, east side of Maryland avenue, 1823, on the east side of Maryland avenue, received by J. T. M. Barnes. Did you or not pay these bills?
A. Yes, sir.

Q. Did you or not pay that account?

A. Yes, sir.

Q. That is his water bill for 1894, at 1823 Maryland avenue, $10, discount 40 cents, $9.60, received payment, J. S. Ichelem?

A. Yes, sir.

Q. Did you or not pay this account; this is a bill for ground rent dated October 1st, 1894, for six months' ground rent on property 1823 Maryland avenue, $90?

A. Yes, sir.

Q. April 1st, 1895. Franklin J. Morton to Chas. G. Fisher, 6 months' ground rent, 1823 Maryland avenue, $90; received payment, Chas. D. Fisher, per Jackson?

A. Yes, sir.

Q. State in whose handwriting the signature to that is.

A. Mr. Harrison's.

(Receipt of December 1st, 1894, $40, read.)

Q. Did you at any time subsequent to the purchase of the property No. 1823 Maryland avenue, purchase any other property in that neighborhood; if so, what, and for whose account?

A. I bought the house No. 1821, next door; I bought it for Mr. Harrison; that is to say, I bought it in conjunction with business with him; I bought it for him. He bought it at auction and I paid for it.

Q. In whose name was the title taken?

A. The title was taken in my name.

Q. Please look at that account and state whether or not that was paid at his request, and what it is.

A. It was paid. $79.70 on the property, 1821 Maryland avenue.

Mr. STOCKBRIDGE: We have only a copy of that declaration of November 1st, 1894; if you have the original, we will be glad to have it. (Original produced and read.) Mr. Morton, please state to the court how and by whom that house was purchased.

A. It was sold at public auction, and Mr. Harrison attended the sale and bought it in; Mr. Hiram Woods was the one that had it sold. Mr. Harrison was told by me that he could buy it in from me, which he did, and I paid for it.

119 Q. Mr. Morton, you have testified that that was bought at public auction. Do you recollect the amount which it brought at auction?

A. About $800.

Q. Have you ever seen this paper before?

A. That was made out in Mr. Stockbridge's office.

Q. This is an assignment from Mr. Brundige, as trustee, to Mrs. Florence I. Harrison, of this particular piece of property; it recites the consideration of $750, and is dated on the 1st day of November, 1894, and that is a conveyance to Mrs. Florence I. Harrison, and on that paper you recognize the signatures of Mr. and Mrs. Harrison?

A. Yes, sir; they were both at the office.

Q. This is a deed from Mrs. Florence I. Harrison and Walter H.

Harrison, her husband, to Franklin J. Morton, reciting a consideration of $2,500, of the same date, conveying the same property.

Mr. GANS: Then on that day Harrison got $2,500 from Morton in cash.

Mr. CARTER: The same $2,500 that is mentioned in the other.

Q. In whose control or occupancy for you has that property, 1821 Maryland avenue, been since the time of its conveyance to you in 1894?

A. Part of the time it has been vacant, and it is now occupied by Mr. Fenton.

Q. Have you ever received or collected any rents from it?

A. Not a cent.

Q. Have the keys ever been in your possession?

A. No, sir; I have asked for them and asked for them.

Q. In whose possession have these keys been, if you know?

A. In Mr. Harrison's.

Mr. POE: In order to enable it to be understood, will your honor allow me to read this last clause? My friends may be entirely right, but it is not according to our idea of what the transaction is, the last clause of the agreement of November 1st.

(Clause in question read.)

(Here insert agreement.)

Memorandum of supplemental agreement made this first day of November, in the year one thousand eight hundred and ninety-four, by and between Franklin J. Morton and Walter H. Harrison, both of Baltimore city, in the State of Maryland.

Whereas, by a supplemental agreement bearing date the 22nd day of August, 1894, it was provided that upon the repayment by the said Walter H. Harrison to the said Franklin J. Morton, of the sum of two thousand five hundred dollars, together with interest thereon, certain securities in said agreement mentioned and referred to, and upon that date transferred by the said Harrison to
120 the said Morton, to wit, a certain judgment recovered against a certain Stephen J. Thompson by the said Harrison in the Baltimore city court, on the 14th day of December, 1891, as also an insurance policy upon the life of the said Thompson in behalf of the said Harrison, should be reconveyed to the said Harrison.

And whereas, the said Franklin J. Morton has this day advanced to the said Harrison a still further sum of two thousand five hundred dollars, for which the said Harrison has given to the said Morton his promissory note for said sum of two thousand five hundred dollars, payable sixty days after date, with interest thereon from date at the rate of 6 % per annum, as part security for the repayment of which said sum the said Blanche I. Harrison and Walter H. Harrison, his *wife*, have this day assigned to the said Franklin J. Morton a certain leasehold lot of ground situated on Maryland avenue, in the said city of Baltimore.

Now this supplemental agreement witnesseth, that the said parties

have agreed, and do hereby agree each with the other in the manner following, that is to say: That upon the repayment by the said Walter H. Harrison, or any one in his behalf, to the said Franklin J. Morton, of the said sum of two thousand five hundred dollars, together with the interest thereon, as provided by the terms of the said note, the said Franklin J. Morton shall and will reconvey to the said Blanche I. Harrison or Walter H. Harrison, or such person or persons as they may designate, the said leasehold lot of ground and improvements upon Maryland avenue heretofore referred to, and that upon the repayment of the further sum of five thousand dollars, whereof two thousand five hundred dollars is the sum mentioned and referred to in the agreement of August 22nd, heretofore mentioned, and which said sum bears interest from date, the said Franklin J. Morton shall and will reassign to the said Walter H. Harrison, or to such person or persons as he shall designate, the said judgment and insurance policy mentioned as collateral in the said agreement of August 22nd.

And it is further understood and agreed by and between the parties hereto, that the advance of this date heretofore mentioned and referred to as having been made by the said Morton to the said Harrison, was for the purpose of enabling him to prosecute a certain negotiation relative to gold lands in the State of North Carolina; that upon the completion of the said deal and as a bonus for the advance now made, the said Walter H. Harrison shall and will pay over to the said Franklin J. Morton a further sum of two thousand five hundred dollars.

In witness whereof, the said parties hereto have subscribed their *hands* and affixed their hands and *affixed their* seals the day and year first above written.

(Signed) WALTER H. HARRISON. [SEAL.]
FRANKLIN J. MORTON. [SEAL.]

Test: H. STOCKBRIDGE, JR.

Mr. STOCKBRIDGE: But for whatever account paid, the house was transferred as a part of that security.

121 Mr. FISHER: He said Mr. Harrison bought the property in for him, and he paid the purchase-money.

Mr. CARTER: Mr. Morton, the owner of this property, it seems at the time of the sale, was a Mr. Brundige, he was the trustee?

A. Yes, sir.

Q. Mr. Morton, do you know from anything Mr. Harrison told you, or know of your own knowledge, where Mr. Harrison or Mrs. Harrison got the money with which to pay Mr. Brundige, the trustee, for that property?

A. All the money that I know of came from me.

Q. Well, but came from you in what shape?

A. Well, out of this money that I had brought up there to Mr. Stockbridge.

Q. Out of the $2,500, you mean?

A. Yes, sir.

Q. That $2,500, I judge from this last remark, was paid at Mr. Stockbridge's office, was it?

A. Yes, sir; I took it up there and paid it.

COURT: I understand you claim on account of 1821 Maryland avenue, taxes $79.07, and ground rent $90.00? The other claim is on the $2,500?

(Mr. CARTER:)

Q. Mr. Morton, you have in the examination that has been made with reference to the various payments which you made, and various moneys you advanced to Mr. Harrison, among others stated, as Mr. Gans has aggregated it, about $13,400.00 on account of the manganese speculation. Did you ever get any of that back? Now, what became of that property; have you any idea?

A. No, sir.

Q. Have you any idea?

A. No, sir; Mr. Harrison has not made any accounting to me at all; he has entirely ignored the whole transaction.

Q. Has Mr. Harrison ever told you whether the matter has been abandoned?

A. No, sir; he has not.

Q. At all events, you have never gotten anything from it?

A. No, sir.

Q. Well, now, among the other items of differences made by him here, was for a judgment against Mr. Stephen Thompson, one in New York, and afterwards one in Baltimore; have you ever derived anything from that?

A. No, sir.

Q. Mr. Morton, the contract spoke of your prosecuting that judgment. Have you been prosecuting it, and what observations did you find?

A. I commenced as I could, and then the plea came up in
122 construction that it was a fraudulent claim, and could not be collected.

Q. That nothing could be collected be-ause it was a fraudulent claim?

A. A fraudulent claim; yes, sir.

(Mr. FISHER:)

Q. Which judgment are you speaking of now; there was a Baltimore judgment and a New York judgment, as I understand it?

A. The Baltimore judgment; yes, sir; I am speaking of the Baltimore judgment.

Q. Have you ever gotten anything out of the New York judgment?

A. No, sir.

Q. Now, Mr. Morton, passing from that for the time being, so as not to detain the court, two papers, two duplicates of one paper, dated the 8th of December, 1894, have been offered in evidence, the general purport of which is an agreement on your part to purchase certain devices, patent devices, for $100,000.00, and these are

dated December 8th, 1894. Now, I want to ask you whether in the early part of 1894, before December 8th, 1894, you had had any conversation with Harrison and with Campbell, with reference to that device, that patent; and if so, what did you agree, and on what terms, to it, in connection with that device, that patent device?

(To which question the plaintiff objected, and asked the court to refuse to allow the same to be answered, but the court would not refuse to allow said question to be answered, and the plaintiff excepted and prays the court to sign and seal this, his first bill of exceptions, which is accordingly done this — day of ——, 1896.)

—— ——. [SEAL.]

After the offering of the evidence set out in the foregoing bill of exceptions, which is hereby made a part hereof as fully as if it was here incorporated, the defendant further testified in answer to the aforesaid question:

Mr. Harrison told me that Mr. Campbell had a patent for making kegs; he came into my office and asked me to go up to his office and look at it; I went up there and saw him, and he was in my office afterwards, and we talked there about it being a desirable thing, and if it could be used in conjuncyion with the old company.

He came into my office afterwards, and also Mr. Campbell was there, and they talked about it, and about its being a desirable thing, and the benefit that would come in taking hold of it, or something to that effect, and I told them I would not do anything at all, not at all, until I got the money he owed me; I would not go into any agreement or have anything to do with him until I got my money that was owing; he also talked about how, if it was taken, how much benefit each one would get; that I would get a benefit, Mr. Harrison would get a benefit, and Mr. Campbell
123 would get a benefit, and I told them there, the ones that made the talk; Mr. Harrison made the talk and I sat and listened; I did not make any agreement, no arrangement or no understanding at all, and I told them I would not have anything to do with him until he paid me my money, and then he asked me if I would take it in trust, and I told him yes, *I would take it in trust;* he said there was a small amount of expenses in getting out the patents, &c. Well, I said I would pay that; I would take it in trust for them and pay that; he said Mr. Campbell had given it to him in trust, and asked me if I would take it in trust. That was the way of that. He said there would be some small expenses of getting out the patents in Washington.

Q. Did he tell you about any other expenses?

A. He did not; no.

Q. Now, afterwards, was there any communication made to you by him with reference to any machines that had already been made under the patent, or any other machine?

A. He came into the office and told me that there was a machine coming up from Norfolk, and it was coming by the Norfolk steamer,

and there was a bill of lading attached with a draft on the Merchants' bank, and I would have to pay that draft to get the machine; it was something new; I didn't know anything about any machines down in Norfolk at all, and I paid that and got the machine, and went up to his office.

Q. Well, why did you pay for the machine, just say that.

A. He asked me to do it; it was under that matter that I said I would take the thing in trust.

Q. Well, in the papers that you have already produced here, the payments, you have been for some years paying, advancing Harrison moneys, had you not, on his own account, for matters on his own account?

A. Yes, sir.

Q. Now, when he asked you, or rather when he told you about some moneys that would be needed to get out the patents, &c., you told him you would pay for them in connection with taking them in trust?

A. Yes, sir.

Q. But nothing was said at that time about any machines?

A. No, sir.

Q. And then you said you would pay for this also, after he said the draft had come?

A. That was the $75.00; yes, sir.

Q. Now, Mr. Harrison, in these preliminary talks which you have described to the court, did he tell you who he proposed——

Mr. POE: Don't you think you had better ask him what he told him?

Mr. CARTER: I will ask this question and you can object to it. Did he tell you of any one else that he contemplated having interested in this device except you and Campbell and himself?

124 A. He did.

Q. Well, who did he say?

A. He said the ex-mayor.

Q. Who is he?

A. Ex-Mayor Davidson, and also Mr. Poe; he said Mr. Poe would have an interest in it; he said Mr. Poe had seen it and thought it was a very nice thing, and he would take an interest in it.

Q. What did he say about Mayor Davidson?

A. He said Mr. Davidson offered to give $50,000 advance on the patent, and take the patent as security.

Q. He said he offered $50,000, and would take the patent as security?

A. Yes, sir; I told him it would not be with my consent.

Q. Now, Mr. Morton, was that the condition of things when this interview between you and them occurred on December 8th?

A. That was the state of the matter up to that time.

Q. There is one question I forgot to ask you, Mr. Morton. Will you look at this paper that we have already offered in evidence this morning through Mr. Coale, and I would like to ask you a question

about it. I will read the paper. It is dated Baltimore, November 28th, 1894.

(Paper read.) Now, had you agreed to have these barrel machines, forming machines, coming to you in trust, in the same way as the other?

A. Yes, sir; anything that came out of that matter was to be in trust. I had no knowledge that there were to be any such bills; what he said to me was there would be small amounts for getting out the patents.

Q. In the beginning?

A. Yes, sir.

Q. What did he afterwards tell you of these?

A. Only at the time when they came up.

Mr. FISHER: Ask him what he told him.

Mr. CARTER: Now, Mr. Morton, there has been offered in evidence by us this morning, that an arrangement by which you advanced $2,500.00 to enable Mr. Harrison to exploit this North Carolina gold mine. What representations, if any, did Mr. Harrison make to you about that gold mine in connection with the money he owed you on other occasions?

(To which question the plaintiff objected, because the transaction to which it referred took place on the 1st of November, while the contract in suit was dated Dec. 8th, 1894, and because the question was leading and not bearing on the question of fraud in procuring this contract, and asked the court to refuse to allow the same to be answered, but the court would not refuse to allow the said question to be answered, and the plaintiff excepted, and prays the
125 court to sign and seal this, his second bill of exceptions, which was accordingly done this — day of ——, 1896.

—— ——. [SEAL.]

After the offering of the evidence set out in the foregoing bill of exceptions, which is hereby made a part hereof, as fully as if it was herein incorporated, the defendant further testified in answer to the aforesaid question:

The matter was brought to my notice by Mr. Harrison through Mr. H. C. Turnbull; Mr. Turnbull had given him an option, he said, on the land in North Carolina, which was the gold mine, and he said he had gone to New York to sell it to parties; they had been down there as experts and reported on it, and that he had gone back to New York and sold it, and that the purchase-money would be paid over, $250,000, to me. He brought a man to the office and introduced him, saying that he was a man that came from New York and he was to bring the money when it was got, and it was all arranged; he said the property was accepted, and it simply was a matter of the settlement of it, and the first payment, $25,000, was coming to me.

Q. Well, at that time, December 8th, when the interview took place there, with reference to these papers, was that matter connected with the gold mine still in existence?

A. It was.

Q. These promises that he had made to you?

A. I told him emphatically several times that I would do nothing about this business in forming a company until he paid me my money.

Q. Well, what I am asking you is, when, on December 8th, this interview took place, were the promises that he had made to you about the North Carolina scheme, about the gold mine, about paying you the money, which you have just explained; were they still being talked about between you and him?

A. They were at that very time when they were there, Dec. 8th, at my office.

Q. Well, now, Mr. Morton, in these interviews that you had with Mr. Harrison, how was it proposed to utilize this device; what was to be done with this patented device; what was to be done in order to utilize it, to put it on the market? I am talking about December 8th, now.

A. Yes, sir; a company was to be formed, and I was to have a benefit in it, and he was to have a benefit in it, and Campbell was to have a benefit in it.

Q. Well, who else was suggested to have an interest in the company?

A. Well, there were parties that he said would take stock in it; he said ex-Mayor Davidson and Mr. Poe and others; the others' names I don't remember.

Q. Now, did they produce, did Campbell or Harrison, or both of them, produce to you any subscription list looking to getting up subscriptions for stock in that company?

126 A. Yes, sir; I think there was.

Q. What was the name of the company in the paper they presented to you?

A. They wanted to put it in my name, but I told them that I would not have my name mixed up with any company.

Q. They wanted to have your name?

A. Yes, sir.

Q. And you told them that you would not have your name mixed up with any company?

A. Yes, sir; with any company.

Q. What did they do with the paper they presented with your name in it?

A. I took my pen and scratched out the name.

Q. Now, Mr. Morton, these interviews which you have spoken of, including this last one, in which they presented to you some subscription list, suggesting that the name of the company should be the Morton, the Franklin J. Morton Company, that all occurred before this interview of Dec. 8th, that is, that we have been asking about?

A. Yes, sir; all my talks with them about any company were before December 8th.

Q. What was the name suggested when you struck your name

out of this subscription list, the name of the Franklin J. Morton Company; what name was suggested to go into it in lieu of it?

A. The Eureka.

Q. But was this paper signed by Mr. Harrison in your office and witnessed by Mr. Carey Coale?

A. Yes, sir.

Q. This is simply an assignment of the patent?

A. That is what he brought in my office.

Q. And he brought it to your office and signed it there?

A. Yes, sir.

Q. And Mr. Carey Coale witnessed it?

A. Yes, sir.

Q. Now also, at the same time, Mr. Coale had said that the other paper, this other assignment, was made of these machines that were coming up from Norfolk on the order to the iron works of Norfolk; Mr. Carey Coale has said that he witnessed these signatures. Now, after these papers had been signed, what other papers were presented to you and what took place on December 8th?

A. Then he pulled out these two papers, out of his pocket.

Q. What two papers?

A. These papers of December 8th.

Q. You mean these contracts?

A. Yes, sir.

127 Q. Now, after these had been witnessed, he pulled out these papers. Go on now and tell the court in your way and tell what occurred.

A. I glanced at them and said that I would not sign them, as nothing had been talked of that way, as we had talked of, and I would not sign them at all, and I very emphatically said so, and he commenced talking with me, and I would not be reasoned with at all; I told him I wanted my money first that he owed me, and I would not do anything about this company until they had that settled. Then he talked with me and said that *they were as we said*; says I, No, they are not at all as we said; I will not sign them; and then he said, Well, you sign them; they will be of no force, and you can hold them, hold them both, and be in your possession, and belong to you; that was the idea that he conveyed to me, *that they should be mine until I chose to put them in force.*

Q. Now, let me ask you, Mr. Coale had witnessed these two papers, and then you said this discussion took place between you and Mr. Harrison when he pulled out these contract papers, we will call them, out of his pocket?

A. Yes, sir.

Q. Had Mr. Carey Coale left the office then?

A. Yes, sir, then he went out of the office.

Q. Now, did you call him back?

A. I did; I called him back again.

Q. Now, when he came back, what was said by you to him, Mr. Carey Coale, in the presence of Harrison; did you tell Mr. Coale why you called him back?

A. I told him why I called him back again; I told him I was

going to sign them, and that Mr. Harrison had talked with me, and told me, as I have said, and then he said more; I told Carey what he said, and Mr. Harrison said so too. The language was, *that if I signed them, they would be of no force, that they would be held by me as long as I chose.*

Q. And you have said that you told Mr. Coale that and Mr. Harrison repeated the same thing?

A. *Yes, sir; they were of no value and no force, and only put in use as I chose; whenever I chose.*

Q. Now, did Mr. Harrison say anything, and if anything at that time when Mr. Coale was present, what, as to your possessing the two copies. What did he say upon that?

A. *Yes, sir; he said I should keep them both; both said that they regarded them as mine.*

Q. Now, was what you have told the court said before you signed them and before Mr. Coale witnessed it?

A. Yes, sir; all done before I signed it.

Q. And after that you signed it, and Mr. Coale witnessed it?

A. Yes, sir.

Q. Did anybody else witness them that day but Mr. Coale?

128 A. No, sir.

Q. Well, after they were signed and witnessed, what did you do with them?

A. I put them in my safe and kept them there.

Q. Your iron safe, you mean?

A. Yes, sir; in my inner office.

Q. Have both copies, both duplicates, *if you call them so, been in your possession from that time down to the day that we produced them here, the day that the case began before his honor, Judge Dobler?*

A. *Yes, sir; they were all right in my possession, right in my office.*

Q. They have never been out of your possession?

A. No, sir.

Q. Well, now, you have said that when they were executed that you put them in your safe.

A. Yes, sir.

Q. Did you change the place of custody of them afterwards; and if so, tell the court where you placed them from your own safe?

A. I carried them up to the Mercantile Trust Company.

Q. Have you a box there?

A. Yes, sir; I have a box there.

Q. And you put them in your box there?

A. Yes, sir; I put them in my box there.

Q. Well, that was subsequently?

A. Yes, sir; that was subsequently.

Q. Now, Mr. Morton, at the foot, if you choose to call it, or back of these papers, we find written this receipt: "Baltimore, December 22nd, 1894, received of Franklin J. Morton, $1,500, on account of the within contract. W. H. Harrison, seal." And underneath Henry Campbell, seal. The name Henry Campbell having been first written opposite where the witness generally signs and then struck out, and in this other duplicate the receipt is the same, and

signed Wm. H. Harrison, seal, and then underneath is the name of Henry Campbell, seal; but there is no erasure of the name Henry Campbell, under the witness place, and no name of Henry Campbell in the witness place, on this other one. Now, will you please be kind enough to tell the court the circumstances, as they occurred, in which that was written on these papers when they were at your place, on December 22nd; and just tell the court how it happened?

A. Mr. Harrison told me that Mr. Campbell had a claim against Mr. Cook.

Q. One moment; let me ask you; Mr. Harrison came to your office before, did he?

A. Previous he told me.

Q. Told you what then?

129 A. That Mr. Campbell had a claim against Mr. Samuel G. B. Cook, and that he was going to press it through Graflin Cook and collect it; I didn't make any reply to that, for it was nothing to me, but the day, December 22nd, he came to my office with Mr. Campbell, and said, I would like to look at these papers, and I had them in my office, my inner office, and I did not think I had any reason to refuse them, and I took them out; then he said, "I want to put this on this." I will assign this claim that I have against Mr. Samuel G. B. Cook, that Mr. Campbell has assigned to me; I will assign it to you; I will put it on the back of this, which he did; he took them two and put them right down there; he took the two papers and put that right on the back, Received, $1,500; that is a transfer of that claim; *I did not accept it; I did not make any objection, and I did not say anything.*

Q. Did you read what he wrote there that day?

A. *I did not read it at that time, no.*

Q. Now the claim which he claimed to have by assignment from Campbell against Cook, was a claim for how much?

A. For 300 pounds.

Q. Now, Mr. Morton, after he had asked you to let him see the papers, which you say was the first thing he said when he came in there——

A. Yes, sir.

Q. What was the next thing he said?

A. He said that he was going to assign me that claim; that Campbell had assigned it to him and he was going to assign to me the claim against Mr. Cook.

Q. Did he have it with him?

A. He did.

Q. What did he do with it?

A. He took these two papers out of the box.

Q. You say he had that claim against Cook with him?

A. Yes, sir.

Q. What did he do with that when he told you he was going to turn that over to you; what did he do with the document?

A. *He must have passed it over to me.*

Q. He passed it over to you?

A. Yes, sir.

Q. And then what did he say he wanted to do in connection with it on the papers, on the contract?

A. He wanted to put it on the back of these contracts, the back of these papers.

Q. Was that the reason he asked you to let him look at the papers?

A. He did not say what reason he had, when he came in; he said he wanted to look at these papers.

130 Q. And after having told you that, then he told you he had this claim that he was going to turn over to you?

A. He brought out this claim from Cook out of his pocket.

Q. And handed that to you?

A. He said he wanted to put this on the back of this paper.

Q. Yes; now will you look at these papers and see whether they are the Cook papers that he brought you; the draft is in a separate paper there.

A. *Yes, I think they are.*

Q. These are the papers?

A. Yes, sir.

Q. Just merely for identification; they were offered during the Campbell examination; I won't read the agreement, but this is the draft, dated Baltimore, September 13th (draft read). Now, Mr. Morton, after he had written this receipt, what did he say to you, if anything. First, let me ask you this question. Was Mr. Campbell in the room at the same time?

A. He was.

Q. This was in your inner office, was it?

A. Yes, sir, the inner office.

Q. What is marked on the plat there, the inner office?

A. Yes, sir.

Q. Mr. Campbell was there?

A. Yes, sir.

Q. Now, after he had told you what you have told the court, and had written on the two papers, did he say anything to you about money?

A. He said he wanted to pay Mr. Poe some money for services; he wanted a check of me for $775; he wanted $25 on account of the Thompson matter, looking up his claim over in New York; as I understood it, to pay him over in New York.

Q. What was he going to do with the $750?

A. He said he was going to pay Mr. Poe for his services.

(Mr. CARTER:)

Q. Mr. Morton, at the close of the examination yesterday, we were asking you about the interview that took place on December 22nd, 1894, at which Mr. Harrison and Mr. Campbell were present in your office, and you have stated that on that day you paid Mr. Harrison $775, he having asked you for that amount. Now will you be kind enough to look at this check and say whether that is the check for the payment you made to him, and also whether this is the receipt that he gave you for that payment?

A. Yes, sir, these are both my checks, and also my receipt, both.

Q. If your honor please, I will read the check and receipt. (Check and receipt read.) Now, Mr. Morton, did you hand that check to Mr. Harrison at your office on that day?

131 A. I did; it was late in the afternoon and after banking hours, and he said he could get it cashed. I did not pay him on that day any other money than that paid by this check.

(The witness then identified his cash book.)

That is of A. B. Morton & Sons, what he had already explained to be his own writing. The entries in the cash book were all made by myself.

Q. Did you have in your office on that day $1,500 in bank bills?

A. No, sir.

Q. How much do you keep in your office or box or desk for the purposes of your current business?

A. Ten or fifteen to thirty dollars, something like that.

Q. How would you get that money into your office for that purpose?

A. I would draw a little check of $30, or $25, or $20.

Q. Now, you have said that you did not have the $1,500 in your office that day?

A. Yes, sir.

Q. Are you able to say that you did not have more than the small amount, which you have just mentioned, somewheres from ten to thirty dollars that you keep?

A. I never keep any large amounts in the office; I put the large amounts in bank from whatever sources they come.

Q. Now, Mr. Morton, were you expecting Mr. Harrison or Mr. Campbell on this day?

A. I was not.

Q. This day, this 22nd of December?

A. No, sir, they came in unexpectedly; dropped in unexpectedly.

Q. Well, now, how do you get in your office any moneys, any bank bills that were brought there, from what source do they come?

A. They come from checks on banks.

Q. So that if any money was brought into your office, it would be from some checks?

A. Yes, sir.

Q. Now, can you tell me, without looking at your cash book—let me ask you one other question first. Were the checks that you drew to get money entered upon your cash book?

A. Yes, sir.

Q. Now, will you refer to your check book and the stubs of it, both check books; I do not know whether I have asked you or not, but in what bank do you keep the account of A. B. Morton & Sons?

A. In the First National and National Mechanics'.

Q. Now, please look at the stubs for the month of December, in your check book, and give them to us. First we will take the First National bank, and I will take it from the first of December.

(A. In answer to this question the witness read the stubs for the month of December in the First National, and Mr. Gans read the stubs in the National Mechanics'.)

Q. Now, that runs down to the end of December. It was balanced at the end of November and then balanced at the end of December. Now, we have read all of the checks during December.

A. Yes, sir.

(Mr. CARTER:)

Q. Now, Mr. Morton, how often do you balance your cash book?

A. Every week; I balance it every week.

Q. Well, at the end of the month what was done by you?

A. I have some little memorandums on a little slate and I put them on my cash book and balance it at the end of the month.

Q. A little memorandum on the slate; what was the character of this memorandum?

A. These were my whole expenses; little farm bills, and so forth, that I was acting as agent for.

Q. Then you would keep on a slate these small bills until the end of the month, and then enter them on the cash book; is that right?

A. Yes, sir.

Q. And then balance the cash book at the end of every month?

A. Yes, sir, balance it up and put it in ink. Previously I had balanced it in lead pencil.

Q. Now, are you able, Mr. Morton, without reference to your cash book, without looking at that, to refresh your recollection; are you able to state what became of all the moneys, in detail, that you drew out by these checks; can you carry that in your mind?

A. No, sir; I cannot.

(Mr. GANS:)

Q. Mr. Morton, now looking at this cash book again; will you be kind enough to tell the court as to whether the cash was promptly balanced at the end of November, 1894, and at the end of December, 1894?

A. Yes, sir; it was balanced at the end of November, balanced to a cent, and then the balance of cash at the end of December was brought down to the first of January.

Q. Well, I understood Mr. Carter to ask the question a few moments ago, that all moneys that you had in your office, that you have described, are moneys that were entered on this cash book?

A. Yes, sir.

Q. No matter from what source they came?

A. No matter from what source they came, they were entered on this cash book.

133 Q. No-, suppose that money would come to you from your connection with the firm of Hofnagle, Plotea & Company?

A. That would be credited to them.

Q. That would be credited to them on this book?

A. Yes, sir; credited to them on this book.

Q. Now, in the course of your business, when did that money come, in a lump sum at the end of the year or from time to time?

A. Well, if I received funds from that firm, I put it on my cash book, credited them and returned it.

Q. Did you borrow money from them?

A. I would at times; yes, sir.

Q. And lend them money?

A. Yes, sir.

Q. So, if I understand, all your cash transactions, they were on here?

A. Yes, sir.

Q. And your having any money, either in bank, to your own account, or in bills to your office, all these would go on this cash book?

A. Yes, sir.

Q. So that if this book is correctly kept—you kept it yourself, didn't you?

A. Yes, sir.

Q. So far as you know it was correctly kept?

A. Yes, sir; the book-keeper would make it correct on these occasions.

Q. Then I understand you to say, that in the beginning of December, 1894, your cash exactly balanced, and at the beginning of January, 1895, it exactly balanced?

A. Yes, sir; every month it balanced to a cent.

Q. Now, the cash having balanced in that way, are you able to say as to whether there is any entry in this cash book of any payment of this $1,500?

A. No, sir.

Q. There is no entry to this payment of $1,500?

A. No, sir.

Q. And your cash balances are exactly right?

A. Yes, sir.

Q. That entry not being there upon the book?

A. No, sir.

Q. Whenever an expenditure would take place with regard to something for which you did not pay in a check, would that be entered on the cash book?

A. Yes, sir.

134 Q. Can you tell the court the character, in the course of your business, of the disbursements made by you in cash money as distinguished from checks, as to whether they were large or small, and about what they were; what kind of disbursements did you make in money?

A. Well, I would draw little checks for $25 or $30 to pay little bills, and then in large amounts I just paid by check.

Q. So that if I understood you, the cash money which you kept on hand was simply to cover small current expenses?

A. Yes, sir; just to pay little bills that might come in; I never give a check less than $20.

Q. Now, will you kindly tell the court the various sources from which it would be possible for you to have money in your office during December, 1894; during that month what are the sources from which money would come to you in December of 1894?

A. Well, they would come from the checks drawn on the bank.

Q. From checks drawn on the bank?

A. Yes, sir.

Q. This is only your personal account, is it not?

A. It is only my personal account; yes, sir.

Q. A. B. Morton & Sons simply means yourself?

A. It means myself—my father and brother having died, I represent the firm.

Q. Did I understand you to say when you dealt with the firm of Hofnagle, Plotae and Company, in such a way as to have money come into your hands, you regard that as being received by you personally and entered on your cash book?

A. Yes, sir.

Q. Your personal cash book?

A. Yes, sir.

Q. And it is done in that way?

A. Yes, sir; it is drawn for me altogether; that is a distinct firm.

Q. Of course, Mr. Morton, if that $1,500 had actually been paid from moneys received and entered on this book, your cash would have not balanced; you would have been $1,500 out?

A. No, sir; if I had paid it, it would have come from some source.

Q. And the cash balance would have been $1,500 short?

A. Yes, sir.

Q. Now, if the court please, in addition to that we have the bank book. Just look at it please. Of course you know these books better than we do from the outside?

A. Yes, sir.

135 Q. Here is one, and here is the other one; the Mechanics' and the First National. These are the two bank books. Now, we offer these two bank books in evidence. The comparison between the bank balance by these books, and the balance here will show, if the court please, that the balances are correct; we will have to figure it out. We simply offer the books in evidence, and it can be very readily ascertained. The proof is that all is to demonstrate mathematically that there would not be $1,500 in office at that time.

Mr. POE: We object to the book going in.

(Mr. CARTER:)

Q. Mr. Morton, you stated a while ago that certain small items

that were connected with your household, and farm expenses, were kept on a slate during the month, and then at the end of the month the entries were entered in the cash book?

A. Yes, sir.

Q. The other entries that were made at the time of the occurrence?

A. At the time, yes, sir.

Q. Now, would this book then show the balance of cash that you had on hand at the end of the month?

A. Yes, sir, exactly.

Q. Well, take that particular date, would it show the balance that was then on hand, of cash, whether by checks or bills, except so far as that balance would be affected by these small slate items?

A. Yes, sir.

Q. Because when you made the entries at the end of the month of the slate items, you do not make them as of the date on which the cash had been expended?

A. No, sir.

Q. You just put them down at the end of the month as payments made during that month?

A. Yes, sir.

Q. But you do not fix the date on which these small items have been paid?

A. No, sir.

Q. So that if you take the balance of this book, on any particular date, say the 22nd of December, you understand me?

A. Yes, sir.

Q. Of course that balance would be affected by such of those small items as has been paid before December 22nd, though not entered until afterwards?

A. Yes, sir.

Q. But with that exception this book shows the balance on hand at any particular time, the balance of cash on hand?

A. Yes, sir.

136 Q. Now, do you also keep on this book your accounts with the different banks?

A. Yes, sir, they were all put down; the entries to the banks were credited with the checks drawn when the amounts were paid out.

Q. I find here, Mr. Morton, on the top of your cash account, items like this——

Mr. POE: Let us have it understood whether the book is to be used.

Mr. CARTER: Of course we are offering it in evidence.

Mr. POE: We understood it just the reverse.

And thereupon the plaintiff objected to the offer to put in evidence the cash book of the defendant, and kept by himself and in his own handwriting, and asked the court to refuse to allow the said cash book to be put in evidence, but the court would not refuse to allow the same to be put in evidence, but permitted it on the

ground, as stated by the court, solely for the purpose of ascertaining the manner of book-keeping; the way whereby this witness is enabled to testify as to the manner of his balances without any regard so far as the court was concerned to any entries that may be contained therein, but the plaintiff insisted on his objection, and maintained that the book should be excluded altogether, which objection the court overruled and the plaintiff excepted and prays the court to sign and seal this, his third bill of exceptions, which is accordingly done this — day of ——, 1896.

—— ——. [SEAL.]

After the offering of the evidence set out in the foregoing bill of exceptions, which is hereby made a part hereof as fully as — it was herein incorporated, the defendant further testifies on his own behalf, as follows:

(Mr. CARTER:)

Q. Now, Mr. Morton, I find here on the 24th of December, drawn from the National Mechanics' bank, five hundred dollars?

A. Yes, sir.

Q. Now, I want you to explain to the court why you put an entry of that sort on the side of your cash book; what does that mean?

A. That is to balance the payment on the other side. When I receive money I credit the person, and when I put it in bank I charge it to the bank, and when I pay a person I draw a check for it, and I credit the bank on that side, and debit the person on the other side, and thus a perfect balance is kept in the book.

Q. I find the other side, on the 24th, "paid Turnbull & Norris," and here are two sums, $500 and $500, on the opposite side of the book, and out here $1,000. Now, I find here, "received on the 24th from Hofnagle, Plotea & Company, $500," and you drew out this check; that makes that $1,000?

A. Yes, sir.

137 Q. Then the amount you received from Hofnagle, Plotea & Company with that check is balanced over here by the amount you paid to Turnbull & Norris?

A. Yes, sir.

Q. Now you drew out $929.62 on the 24th; can you point out where that is charged on the other side?

A. The check stub would show what payments had been made on that.

Q. The check stub would show all that was paid in check?

A. Yes, sir, it would show here; that made that $929.

Mr. STOCKBRIDGE: That is the aggregate of these three accounts

(Mr. GANS:)

Q. Then when you make an entry here, from a bank, you said the First National bank $929.62, that does not necessarily mean that that was all drawn out by one check?

A. No, sir, that was that day at that bank.

Q. Then you refer to the check stub, and I find, if your honor please, $511.62 is one check, and $368 is another, and for bills, $50 is the third, making up this account, and then we have got that on the other side.

COURT: I do not care any more about that; I understand the theory now.

Q. Now let me understand one thing further, Mr. Morton; the balance at the end of December, for example, take it for illustration, appears to be $46.96?

A. Yes, sir.

Q. What does that balance represent; the amount of money you have in the office?

A. That represents the amount of money on hand.

Q. The amount of cash on hand?

A. Cash on hand.

Q. Now, if you, when you got the bank balance from this book on that day, you would be obliged to take the debits and credits of the bank, would you not, and from that you could ascertain the bank balance?

A. Yes, sir.

Q. Whatever the bank balance was?

A. Yes, sir.

Q. Now, taking this book at any particular day, say December 22nd, 1894, with the exception of these small amounts, which you say you put down on the slate from time to time, representing your farm account?

A. Yes, sir.

Q. I find, for example, at the end of the month, here are small amounts running from 50 cents and 75 cents through a number of items, amounting together to something like $300; now these small items during the month you do not enter on the cash book as they occur, but you put them in at the end of the month?

A. Yes, sir.

138 Q. So that independently of that, say on December 22nd, would it not upon this book be entirely competent for any book-keeper to find out what the bank balance was on that day, from this book?

A. Yes, sir.

Q. And what the cash balance on hand was?

A. Yes, sir.

Q. And it would vary only as to the little sums here that you had not put on before the 22nd?

A. Yes, sir.

Q. That you had drawn out and not put on that book?

A. Yes, sir.

Q. In December these sums run, all told, over something like $400; that would be the outside valuation, would it not?

A. Yes, sir.

Q. Now, can you tell, Mr. Morton, from examining your book, of course you cannot tell from recollection, all these details, but your

recollection being refreshed by the examination of this book, can you tell as to whether it was possible to have a cash balance in the office on December 22nd, amounting to anything like $1,500? I want you to take your book and refresh your recollection, and state to the court, from the way in which you kept your business and your books, as to whether it was possible for you to have had on hand at that time anything like $1,500?

A. On the 22nd of December I would add up on the credit side, and I would add up on the debit side, and I would take what had been credited since that time, and take that from the footings, and it would show what was on the credit side at that time, and I would do that the same way on the debit side, on the payment side; that would show what was on hand at that time.

Mr. CARTER: Now, Mr. Morton, in Mr. Campbell's testimony, he testified that when he came there with Mr. Harrison on December 22nd, and these alleged contracts were taken out of the safe, that you asked him, Mr. Campbell, to add his name as a witness, stating that there was only one witness to that, that of your clerk, Mr. Carey Coale, and you asked Mr. Campbell to add his name as a witness to these alleged contracts. Is that so?

A. He tells a wrong story; it is a lie.

Q. It is a lie, you say?

A. Yes, sir, it is a lie; Mr. Harrison asked him to put his name there.

Q. You made no request of him at all of that kind?

A. No, sir, none at all.

Q. Now, Mr. Morton, after this interview of December 22nd, what took place with reference to this offer, or promise rather, on the part of Mr. Harrison, to pay you the money that was due to you, growing out of these transactions, by giving you the money from
139 the North Carolina gold mine; did Mr. Harrison go to New York in that connection, or tell you he was going there?

A. It was in December that this matter of the acceptance of the sale of the North Carolina mine was going on, and he was in my office, and he said that it had been consummated, and that the purchase-money would be, the first instalment would be paid to me, $25,000, and he said that if I would give him $75, it would enable him to go over to New York and expedite the settlement, the getting of the funds, and he wanted the $75 to pay some office rent and expenses of going to New York, and I gave him the $75 and took his receipt.

Q. Well, now, Mr. Morton, you have testified that he brought a person that he said was from North Carolina to your office, and told you that the matter had been consummated; do you remember what name he gave; who he told you that person was; do you remember the name?

A. He brought in a gentleman from New York and introduced him to me as Mr. Whitan, and he said this man was one of the parties over in New York that had to do with the deal of the sale of the land, or would be the one that would bring the money over from New York to give it to me.

Q. Now, did he tell you the time the money would be forthcoming?

A. The first day after January 1st, 1895. I told him I wanted it in bank bills or a Baltimore draft on a bank that I could see that it was good before I gave him any receipt; that was my idea.

Q. Now, after he went to New York, did you receive some letters and telegrams from him?

A. I received a letter from New York, in which he said he was going to North Carolina.

Mr. CARTER: You have the original of this telegram and we want it unless you are willing that we read the copy. (Original produced.)

(Here insert it.)

BALTIMORE, *Jan'y* 5, 1895.

To W. H. Harrison, Broadway Central house, 667 Broadway, New York:

Recall draft; cannot pay it.

F. J. MORTON.

Now, if your honor please, this is a letter which I will introduce. Be kind enough, Mr. Morton, to look at that letter and telegram, and say whose handwriting that is.

A. Mr. Harrison's, from New York; I received that letter.

Q. Did you send a telegram, of which a copy is there?

A. Yes, sir.

Mr. CARTER: Now, here is the letter, dated January 4th, 1895. (Letter read.)

140 NEW YORK, *Jan. 4th*, 1895.

FRIEND MORTON: I have given the Chatham National bank of this city draft on you for $1,175.00, which please pay upon presentation without fail. Trusting that good, kind Providence will in the future, as in the past, confer upon you and yours its blessings, permit me to indulge in the hope that yourself and family have enjoyed a merry Xmastide and a happy New Year. For myself I must say that I have not enjoyed such a happy New Year *year* as I might have expected, but the near future is bright with hope; shall be with you at the earliest opportunity; till then, I remain

Sincerely yours, W. H. HARRISON.

Now, to that, on January 5th, Mr. Morton sends this telegram to him: "W. H. Harrison, Broadway Central hotel, 667 Broadway, New York: Recall draft; cannot pay it. F. J. Morton." Now, next, on January 8th, comes a telegram from Mr. Harrison, dated at Greensboro, N. C.

"JANUARY 8TH, 1895.

"Franklin J. Morton, Firemen's building, Baltimore:

"It is very important that you do as requested in my telegram of this morning; I look for favorable results." I ought to have read a previous telegram. The previous telegram is dated the same

day, January 8th, 1895, and from the same place, Greensboro, and is addressed by Harrison to Morton. "I understand you return my draft. Immediately upon receipt of this, wire funds to cashier, Chatham bank, New York, without fail. Wire me instantly draft paid. Do this, or all may be lost.

W. H. HARRISON."

Now, then, that preceded the telegram which I read first. Mr. Morton answered it on the same day, the first dispatch, to this effect:

"BALTIMORE, *Jan. 8th*, 1895.

"Cannot meet draft as requested.

"FRANKLIN J. MORTON,"

and to the second dispatch, this reply was sent on the same day, addressed to W. H. Harrison, Greensboro, N. C.:

"Have sent dispatch; cannot spare the money."

Now, on January 8th, the same day that these telegrams were sent—that is Mr. Harrison's handwriting, Mr. Morton?

A. Yes, sir.

Q. Mr. Harrison writes this letter to Mr. Morton, from the same place, Greensboro, N. C., January 8th, 1895.

(Letter read.)

(Insert it.)

JAN. 8TH, 1895.

FRIEND MORTON: Just a word. Be true, my love. Be true, my love. *To thyself, anyway.*

Sincerely y'rs, W. H. HARRISON.

141 Now, there is another letter; is that Mr. Harrison's hand writing?

A. Yes, sir.

Q. January 8th, 1895, dated from the same place, Greensboro:

"FRIEND MORTON: Just a word; be true, my love, be true, my love, to thyself anyway.

Sincerely yours, W. H. HARRISON."

Now, Mr. Morton, these letters and telegrams from Greensboro—did you answer them in any way?

A. I did, yes, sir; I answered them by dispatches. His son came into the office, and I told him to telegraph his father that the draft would not be paid.

Q. Now, these letters, as well from New York as from Greensboro, were all written subsequent to January the second; the second of January being the date that he promised you here in Baltimore, in company with a person whom he had represented to you as Mr. Whitan from New York, that this money would be forthcoming on the day after New Years, that would be the second. Not having received that money, you got these letters and telegrams, and answered them as you did?

A. Yes, sir.

Q. Now, then, Mr. Morton, when did you next see Mr. Harrison; I do not mean the date, but did he come back to Baltimore then form North Carolina?

A. He did; he came back and was sick; word came to me that he was sick at home.

Q. Did he afterwards come to your office when he got out?

A. He did; he came to my office.

Q. Now, then, when he came to your office, what demands, if any, did you make on him in reference to the two papers which had been signed in your office on December 8th, and which you have explained were to be kept by you, both of them; what demand did you make of him?

A. He came to my office, after he got out from his sickness, and he said, "Are you going to let me die; you didn't come to see me." I told him, "I want to see you," and I left my desk where I was with the young man, and I went from the office, and went right into the middle office, and I sat down and he sat down on the other side, and then we talked about that house that I had bought and that he had the key. I demanded from him the key; I said I tried to get it from his son, and he hadn't kept his word after he promised to give me the key. I said that I wanted to rent that house and get some revenue out of it, and he wanted to know then if any person wanted to rent that house. I said, No, it had been idle a long time, and I wanted to see if I could rent it. He said, If you know anybody that wants to rent it, send them to me. Then I said to him, I want you to go with me and my young man up to the trust company and let me destroy those papers.

142 Q. Destroy those papers: what papers did you refer to?

A. Those papers that I had signed with that man.

Q. The papers that you referred to that you had signed on the 8th of December, in the way you have explained?

A. 8th of December, yes, sir.

Q. Did he refuse to go or not; what did he say?

A. He refused to go; he said also that they should be of *no injury or loss to me; he refused to go and destroy them as I demanded.*

Q. Well, now, this was after, as you have said, he came here from North Carolina?

A. Yes, sir.

Q. And after this failure to pay this money which had been promised to you on the 2nd of January?

A. Yes, sir. I had lost all confidence in him, and I just determined to have no more business with him of any kind; no business with him.

Q. And then you made the demand that you did for the destruction of these documents?

A. Yes, sir: he deceived me so much that I didn't have any more confidence in him, and didn't want anything more to do with him.

Q. Well, now, did you call in one of your clerks to hear this demand that you had made upon him?

A. Yes, sir, one of — clerks came in.

Q. What was his name?
A. His name was Mr. Bowling.
Q. Your book-keeper?
A. My book-keeper.
Q. Now, after that you have said that you have determined to have no more dealings with him?
A. No more business with him; nothing to do with him.
Q. For the reasons you have stated?
A. Yes, sir.
Q. Mr. Harrison, Mr. Gans asked you, He did not hear part of your declaration, after he refused to go with you to the safe-deposit company *to destroy these papers*, and he added something; what did he say?
A. He said he would not, but they should be of no loss or injury to me.
Q. Was that said in the presence of Mr. Bowling?
A. Yes, sir.
Q. Now, Mr. Morton, you had no further dealings with him at any time?
A. No, sir.
143 Q. Up to this time, and then a letter has been offered in evidence here of February 1, 1895, in which he made a demand, sent a letter to your house by Mr. Fenton, I believe?
A. No; he came to the office, Mr. Fenton did.
Q. With the demand dated January 1, 1895?
A. Yes, sir.
Q. Claiming that you should comply with the contract?
A. Yes, sir; he did, and I read the letter and told him I had nothing to say.
Q. You read the letter and told Mr. Fenton you had nothing to say?
A. Yes, sir, and he went away.
Q. Now, Mr. Morton, testimony has been offered that about January 22nd, after these letters and telegsams had passed between you, therefore, and Harrison, which you had refused to pay this draft, and which you stated you had lost confidence in him, it has been in testimony that Mr. Watson sent you the patents which had been issued for this device, and that you declined to receive them?
A. I did.
Q. That is true, is it?
A. Yes, sir.
Q. Now, it has been also testified that he sent you afterwards foreign patents, or rather sent you letters informing you that you had them?
A. Yes, sir.
Q. You never called for them in any way?
A. No; I passed whatever I received over to Mr. Stockbridge; I paid no attention to any communication.
Q. You passed them over to Mr. Stockbridge, your counsel?
A. Yes, sir.
Q. That is, these letters?

A. Yes, sir; from Mr. Watson or whoever they came from.

Q. Now, Mr. Morton, you stated yesterday that then these contracts were brought to you and you read them, Mr. Carey Coale said that you got him to compare them, that you stated that they were not in accordance with your talk, the talk that you had had.

A. Yes, sir; altogether different.

Q. Now, Mr. Morton, prior to the signing of these papers on the 8th of December, did Mr. Harrison tell you what he had given for this patent to Mr. Campbell?

A. He did.

Q. What did he tell you?

A. He said he gave a small amount.

Q. Now, prior to the 8th of December, what had been the
144 only talk that you had had with Harrison or Campbell, or either of them, with reference to this device; what had you been asked to do by them, and what had you said that you would do. Now, first what had you been asked to do?

To which question the plaintiff objected, and asked the court to refuse to allow the same to be answered, but the court would not refuse to allow the same to be answered, and the plaintiff excepted and prays the court to sign and seal this, his fourth bill of exceptions, which is accordingly done this 18th day of February, 1896.

JOHN J. DOBLER. [SEAL.]

After offering the evidence set out in the foregoing bill of exceptions, which is hereby made a part hereof as fully as if it was herein incorporated, the defendant on his own behalf further testified as follows:

Mr. CARTER: Prior to this 8th day of December, 1894, what had they asked you to do in connection with this device, and what is all that you said you would do in connection with it?

A. I said that I would assist them in taking hold of it; I said in a general way that I would assist them in taking hold of it; that is all; I never said any more, and I would not do anything until that money that was due me was settled; I would not do anything at all. I would not take any steps or do anything until my money was given me; then after that I would consider. Then after that I would consider what I would do, or whether I would do anything.

Q. But what I am now asking you is, what was the whole understanding of what they had asked you to do, if you did anything?

A. To join with them in developing it; developing a company; to join with them; no definite understanding been made; no discussion been had between me and Mr. Harrison as to the value of this device, as to what it would amount to.

Q. Mr. Morton, had you made an examination as to what the value of the device was?

A. I had seen it up at Mr. Harrison's office; seen the machine, and I considered it about the same as the other; that is, as the Campbell barrel machine; it might be in some things a little bit better, and perhaps working that in with the other it might be a

benefit to put it in there. That is all, and it was to get the other company to consider it, and to merge the two together, that I was thinking of it at all. I stated that to Mr. Harrison and to Mr. Campbell; that if I went into it, it would be in connection with the Campbell Barrel Company; I was at that time the president of the Campbell Barrel Company.

Q. Now, Mr. Morton, Mr. Watson has testified that you came to his office on December 11th, was the date he gave, but the date is not material, in company with Mr. Harrison, and there he, Mr. Watson, drew up a second assignment in substitution of the one that had been left with you on December 8th, of this device, and that also you executed in connection with Mr. Campbell and Mr.
145 Harrison, a power of attorney to him, Watson, to attend to all business in connection with this device. Now, will you be kind enough to state whether you did go there? Now, Mr. Morton, did you go there to Mr. Watson's office?

A. I did.

Q. And was the assignment made while you were there, directed to be made by Mr. Harrison, while you were there?

A. It was; Mr. Harrison asked me to go up to Mr. Watson's office with him, in connection with the trust that I had assumed, in taking charge of this case, and he asked me to pay the small bills of getting out the patents, and I said I would and I did, and in furtherance of it I went up to Mr. Watson's office, because he was a patent lawyer, and it was a proper thing that I should sign the papers that were presented, in furtherance of that matter of the trust, carrying it forward.

Q. Now, then, there was a paper offered here yesterday in blank, that is signed by you, with reference to which he said it was to be used in getting out the foreign patents; I will ask you if what you did there was done in connection with the same purpose that you have just described?

A. It was.

Q. In carrying out the trusts, as you understood it?

A. It was.

Q. Now, Mr. Morton, you have just said what you had told Mr. Harrison you would do, with reference to the payment of the money necessary to get out these patents. Now, bills and checks have been shown here of moneys that you paid to Mr. Watson, and one also paid to Graham & Lowe in New York or in Washington. Were these payments made in accordance with the same understanding?

A. They were; yes, sir.

Q. Now, Mr. Morton, Mr. Noyes has testified that he went to your office one day in company with Mr. Harrison, and that Mr. Harrison told him that you had sent for him. I will ask you whether you had sent for Mr. Noyes by Harrison?

A. No, sir.

Q. He has also testified that he came there, and when he got there, that you asked him whether he would take charge of the making of these machines which would be made under this new device, saying that he understood and had been working for the

Campbell Barrel Machine Company, and that you told him tha you had purchased, or bought shares in this patent from Mr. Har rison. Now, I will ask you first, did you tell him that you had pur chased the patent from Mr. Harrison?

A. No, sir.

Q. Do you remember having a conversation with him in refer ence to what would happen in connection with any work that h might be desired to do, and if so, state what was said to him?

A. I haven't a distinct recollection of his coming to the office still he might, and if he did, it was just to say in a genera
146 way, it was to say that he might have employment, if any thing was done.

Q. Have you any recollection; the date that he gives as having come there was on the 14th of December; you say you have no dis tinct recollection of when he came?

A. No, sir; not a distinct recollection; I know he was in trouble and Mr. Harrison got himself appointed as trustee for him, and Mr Harrison referred the Fidelity Trust Company to me as to hi character. Well, I thought that it was a small matter, and thought it was a proper thing to say, that I thought it would be al right, and so he got the trusteeship, and he attended to his matter for Mr. Noyes.

Q. Now, Mr. Morton, it has been mentioned in the testimony, tha some machines were purchased at the sale of the Noyes assets, and were purchased for you, for about $25. What request did Mr. Har rison, if any, make of you with reference to purchasing these ma chines?

A. I knew there were about eight machines that were down there I had heard Mr. Noyes speak of them before that they were made by the Campbell Barrel Company.

Q. Made under the old patent?

A. Yes, sir, of the Campbell Barrel Company.

Q. Of which you were president?

A. Yes, sir, and I thought they might be desirable to have in possession of the Campbell Barrel Company, and Mr. Harrison said that he would buy them for me; that he would buy them. I think he said that he could not buy them by himself, because he was the trustee, but he would have somebody else to buy them, and he wanted a check for $300, that would be $75 apiece.

Mr. WHYTE: Just turn your face this way and repeat that, Mr Morton; I did not hear it?

A. I say that Mr. Noyes had told him that there was about eigh machines partly finished down there at the place, and I knew that he was in trouble, and Mr. Harrison had got himself appointed trustee for him, and Mr. Harrison asked me for $300 to pay for these eight machines. He said they would be $75 apiece, and he would buy them for me; I think he said he could not buy them himself because he was trustee, but they would be $75 apiece.

(By Mr. WHYTE:)

Q. Did you give him the money?

A. I gave him a check.

(By Mr. CARTER:)

Q. Now, anyhow, Mr. Morton, these were the machines that had been made, as Mr. Noyes said, under his employment, under his contract with the Campbell Barrel Company, under the old arrangement?

A. Yes, sir, and had not been paid for; they belonged to him.

Q. And he told you that he wanted $300 to buy them?

A. Yes, sir, he did, sir.

147 Q. Now, it has been testified here that they were bought in for $25?

A. Yes, sir.

Q. In Mr. McCrady's testimony, he says: "Q. The price you paid for them, to the best of your recollection, was the sum of $25? A. In that neighborhood, I think; I am not positive as to the amount." Now, will you be kind enough to look at that receipt, and say whether that is the receipt for the $300 that you took from Mr. Morton at that time?

A. Yes, sir; that is the receipt I drew up; he never told me that he had bought it for any less than $75 apiece.

Q. He never told you that?

A. No, sir.

Q. I just read the receipt. It is dated Baltimore, December 14th, 1894.

BALTIMORE, *Dec.* 14, 1894.

Received of F. J. Morton three hundred dollars ($300), which I have received to pay for 8 machines for manufacturing barrels, which J. B. Noyes has in stock and which I have bought for F. J. Morton for the above sum, and will have stored for his account.

W. H. HARRISON.

(Here insert it.)

A. He said he had bought them in this way.

Q. He told you he had bought them?

A. Yes, sir; that is the way I wrote the receipt.

Q. He told you he had bought them, and asked you for $300 to enable him to pay for them; is that right?

A. Yes, sir.

Mr. POE: Where is the check?

Mr. CARTER: I haven't the check here now. Mr. Campbell has stated at this same interview, on the 22nd of December, that you told him that you wanted him to be manager of this company?

A. That is a lie.

Q. When it was formed?

A. No, sir; I did not.

Q. You did not tell him so?

A. No, sir.

Q. Mr. Morton, he has said that he knew nothing about the prospect of forming a company for the working of this device, before the contract was signed. Now be kind enough to state whether the

conversations which you have mentioned as having had with Mr. Harrison, or rather I will ask it in this way; had you had any conversations with Mr. Campbell also, as to helping him to form a company?

A. They were both in my office, and they were both talking about it, and they appeared to be both of them interested in it.

(Mr. WHYTE:)

Q. Appeared to be?

148 A. Appeared to be; they were both interested in it, just as much one as the other.

(Mr. CARTER:)

Q. At all events the conversations that you had had prior to the 8th of December, about the formation of a company, had been with both of them?

A. Yes, sir, in the office.

Mr. GANS: Before proceeding further with the examination of the witness, I would like to say, if your honor please, that during the controversy about the admissibility of this cash book, your honor intimated that the book would not be admitted even in connection with the testimony of the witness who testified he made the entries himself contemporaneously and that they were correctly made; what we would like to do now would be to renew the offer in connection with a case decided by our court of appeals, which, we think, is conclusive on the question, namely, the case of Owens *vs.* The State.

The offer of the defendant's cash book, kept by himself, and in which the entries are testified to as being in his own handwriting, was again objected to by the plaintiff, and the court was asked to exclude it, but the court refused to exclude it, and permitted it to be put in evidence; to which ruling the plaintiff excepted, and prays the court to sign and seal this, his fifth bill of exceptions, which is accordingly done this 18th day of February, 1896.

JOHN J. DOBLER. [SEAL.]

After offering the evidence set out in the foregoing exception, which is hereby made a part hereof, as if it was herein fully incorporated, the defendant, on his own behalf, further testified as follows:

Mr. CARTER: The book, now being admitted on offer, we call your honor's attention to the fact that there is no entry made upon that date of $1,500 paid to Mr. Harrison, and that the only entry of any moneys made on this book as having been paid to Mr. Harrison by Mr. Morton on the 22nd of December, was this: Dec. 22nd, F. J. Morton, paid Walter H. Harrison $775. Your honor will remember that was the amount for which we produced the check. Now, with your honor's permission, simply to get it before the court, we will read all the entries occurring in December, 1894, of moneys paid by Mr. Morton to W. H. Harrison or for his account; they are as follows:

On Dec. 1st, F. J. Morton paid W. H. Harrison $40.

Mr. POE: That is in your bill of particulars.

Mr. CARTER: On the same date F. J. Morton paid Henry Stockbridge, Sr., account of W. H. Harrison claims, $200.

Mr. POE: That is in the bill of particulars, too.

Mr. CARTER: On Dec. 12th, F. J. Morton paid W. H. Harrison $250; in lead pencil underneath that is the following: "Return this week."

On Dec. 13th, F. J. Morton paid W. H. Harrison $75, to pay Norfolk draft.

149 Dec. 14th, F. J. Morton paid W. H. Harrison, to pay for 8 C. B. machines, $300.

On the same day F. J. Morton paid to W. H. Harrison $57, and beneath it is, "To pay Watson & Watson bill."

On Dec. 15th, F. J. Morton paid to Walter H. Harrison $60, to pay Graham & Lowe's bill.

Dec. 19th, F. J. Morton paid Watson & Watson $50, account of W. H. Harrison bill.

Dec. 20th, F. J. Morton paid Graham & Lowe $180, on account of W. H. Harrison.

On the same date F. J. Morton paid James S. Falls' bill to H. C.—I suppose it means Henry Campbell—and beneath that is, account W. H. Harrison, $120.

Dec. 22nd, F. J. Morton paid Walter H. Harrison $775.

On the 24th of Dec., F. J. Morton paid Walter H. Harrison $15, on account of ——.

On the same date F. J. Morton paid Walter H. Harrison freight $10.98, and labor 95, making a total entry of $11.93.

On the same date F. J. Morton paid Watson & Watson's bill, $368, account of W. H. Harrison.

On the same date F. J. Morton paid the Ætna iron works draft, $511.62, account of W. H. Harrison.

On the 27th of Dec., F. J. Morton paid Walter H. Harrison $75.

On the 31st of Dec., F. J. Morton paid Walter H. Harrison to pay premium of policy on his, S. H. Thompson, in the Connecticut Life Insurance Co., $274.90.

On the 31st of Dec., F. J. Morton paid drayage on barrel machinery, account W. H. Harrison, $1.25.

(By Mr. CARTER:)

Q. Mr. Morton, did you, at the recess, make a calculation of how much cash, in checks or otherwise, was on hand in your office—of course I am not speaking about in the bank—on the 21st and 22nd of Dec., without first taking into consideration the small items that you say were entered on the cash book at the end of the month but were carried, in the interim, from the beginning of the month to the end of it on your slate; then I will ask you for that afterwards; first, did you make a calculation of the amount shown by this cash book to be cash on hand at the end of the day of Dec. 21st, at your office, including, of course, checks or otherwise, and excluding the items that you kept on your slate, which were entered on the cash book at the end of the month; if so, be kind enough to state what

it was at the end of the 21st of Dec., irrespective of the slate items which I will ask you about afterwards?

A. I took the amount that was at the top of the page and added down to Dec. 21st; at the top of the page was $41,523.90.

Q. What page?

A. Brought over from the previous page.

Q. Give us the number of the page?

150 A. Page 220 carried over.

Q. What was at the top of page 220?

A. $41,523.90; then I added up the amounts of money received from different sources, whether from persons or banks, down to the 21st of December.

Mr. GANS: Inclusive?

A. Yes, sir; $9,631.95; also another check of Hoffnagle, Platier & Co., for $5,000; that made $56,155.65; on the other side I took from the top of the page 221, what is brought over from the previous page, which was $41,811.88; then I added up the amount down to the foot of December 21, which was $14,082.36; that was up to the night of December 21st, and subtracted——

Q. What two sums did you subtract?

A. $55,884.24 from $56,155.65, leaving a balance of $271.41, the balance on Dec. 21st, 1894, which should be on hand.

Q. That should be on hand at your office at the end of Dec. 21st?

A. Yes, sir.

Q. You have stated that the sums that you paid from time to time for your household expenses, farm and other expenses, were carried on your slate and only put on your cash book at the end of the month; what is the total amount for the month of December of that class of items?

A. $323.25.

Q. You cannot tell from your cash book, can you, what portion of that $323.25 had been in fact expended out of the cash anterior to the night of Dec. 21st?

A. No; I cannot tell exactly.

Q. Supposing that there was a portion of that amount expended anterior to the night of Dec. 21st, to the extent of that expenditure, the $271.41 would have been reduced; is that right?

A. Yes, sir.

Q. But without taking those items, which you have explained were only entered on the book at the end of the month, the total amount of cash on hand at the office that day would be $271.41?

A. Yes, sir.

Q. That would be there in bank bills or in checks?

A. Yes, sir.

Q. Either in checks undeposited or in bank bills?

A. Yes, sir; currency.

Q. Now take Dec. 22nd, 1894?

A. On Dec. 22nd——

Q. Without going through the details, did you make that examination in the same way?

A. I did; in the same way.

151 Q. What was the result—what was the amount of cash shown to be on hand at the end of December the 22nd?

A. $302.21.

Q. That is making the calculation in the same way as you did the previous one, and not counting such portions of the slate items as may have been expended by you in the interval between Dec. 1st and Dec. 22nd; is that right?

A. Yes, sir.

Q. The whole amount expended during the month for what we may call slate items was $323.25, so that by Dec. 22nd, supposing their proportional part had been expended, there would be ¼ or ⅛ of that amount expended anterior to Dec. 22nd; is not that so?

A. A difference of about $20 that was paid after the 22nd of this amount of $323—of those little items on the slate at the end of the month.

Q. You haven't the dates of those?

A. No, sir.

Q. Supposing a proportional part to be paid after Dec. 22nd, the major part—taking the time of the month it had yet to run—had been expended prior to Dec. 22nd?

A. Yes, sir; enough to make this $323.25.

Q. You have said during the examination that you are president at the present time of the Campbell Barrel Machine Co.?

A. Yes, sir.

Q. Can you state how long you have been president?

A. Nov. 23rd, 1893.

Q. You were not president before that?

A. No, sir.

Q. Who was your predecessor?

A. Mr. Rosenthal.

On cross-examination, the defendant testified as follows:

(Mr. POE:)

Q. Mr. Morton, when did I understand you to say that you made Mr. Harrison's acquaintance?

A. The first I knew of him was 1885; I did not make his acquaintance; I merely knew of him and had a little business.

Q. When did you make his acquaintance?

A. It commenced in 1885.

Q. Did you have any agreement or business transaction with him on or about the 19th of December, 1891?

A. Yes, sir.

Q. Can you tell us what the character of the discussion was, and whether the agreement was in writing?

A. Yes, sir; it was in writing.

Q. I want to show you this agreement. Will you kindly look at the paper which I now show you, bearing date the 18th of
152 December, 1891, and purporting to be signed by yourself, signed and delivered by Walter H. Harrison and Franklin J.

Morton, and to be witnessed by Samuel G. B. Cook, and state whether that is an original paper.

A. Yes, sir; that is my writing.

Q. Is that your signature?

A. Yes, sir.

Q. Now look at the letter-press copy of what purports to be a receipt appended to the same paper; is that your signature?

A. Yes, sir; that is my signature.

Q. And his signature?

A. Yes, sir.

Q. And in whose handwriting is the body of it?

A. It looks like my writing.

I, Walter H. Harrison, of the city of Baltimore and State of Maryland, being the absolute *answer* of the patent and trade-mark of the scale known as "Fairbanks Infallible" gold and silver coin scale and counterfeit-coin detector, and for which I am about to have bills introduced into the United States Congress for an appropriation of three hundred thousand dollars ($300,000.00), for the use of the Government offices, &c., who receive and disburse monies of the U. S. Govm. and will require financial assistance for expenses from time to time. Now, therefore, in consideration of Franklin J. Morton, of the same city and State, loaning me $1,000.00 for such expenses on judgment against the Newfoundland Railway Co., and of which I have assigned to the said Franklin J. Morton one thousand dollars interest in same, I hereby assign (personally to him), twenty-five thousand dollars ($25,000.00) out of said appropriation contemplated being made, to be paid to him when received by me.

Witness our hands and seals, this 18th December, 1891.

WALTER H. HARRISON. [SEAL.]
FRANKLIN J. MORTON. [SEAL.]

Witness:
SAM'L G. B. COOK.

BALTIMORE, *Dec.* 19, '91.

Received of Franklin J. Morton, two hundred and fifty dollars on account of assignment and agreement made this day between the said Morton and Walter H. Harrison, it being distinctly understood that only one-half of interest being taken by him in the one thousand dollars mentioned in the agreement dated Dec. 18th, 1891, with the privilege of accepting or rejecting the paying the other half, say five hundred dollars in the next ten days.

WALTER H. HARRISON. [SEAL.]
FRANKLIN J. MORTON. [SEAL.]

Of the above payments—
F. J. Morton pays $250.
S. G. B. Cook pays $250.

Q. Now I will read these to you. (Papers read.) Do you
153 remember whether you made any payments on account of that agreement, and if so, how much?

A. A trifling amount.

Q. Have you any means of telling us how much money you paid; have you no receipts from Mr. Harrison showing what money you did pay?

A. I passed all my receipts over to my attorney.

Q. Isn't it a fact that you paid to him altogether on account of that contract, moneys at sundry times amounting in all to $1,388?

A. I couldn't say.

Q. Do you say you did not?

A. I don't say anything about it.

Q. Well?

A. I say I cannot say.

Q. Now let us have, if you please, gentlemen, the agreement with reference to the Stephen J. Thompson matter, which is the next in date; there was an assignment mentioned in that agreement. Will you kindly look at that?

Mr. GANS: We admit that.

Mr. POE: I will read this. (Paper read.)

Mr. GANS: Does not that appear to be cancelled on its face, as well as the original agreement also?

Mr. POE: This is the original agreement, with the words "Walter H. Harrison" erased.

Mr. GANS: Here is the original agreement with both names erased.

Mr. WHYTE: That is not the agreement; that is the assignment of the $1,000; there is another agreement.

Mr. POE: That is right.

Mr. CARTER: In the agreement both names are erased.

Mr. POE: Precisely so. Now, do you not remember how much money, on account of that transaction, in all, you advanced to Harrison, from time to time?

WITNESS: On account of the Newfoundland? I knew whatever I did it was all cancelled; it did not amount to anything; it never amounted to anything.

Q. Now, then, if you will give me the next contract, the Stephen J. Thompson contract, the next in point of date.

A. If you will allow me to say in addition, that the correspondent said it was not correct and it could not be collected; that is the reason it was dropped.

Mr. CARTER: You mean the judgment.

A. Yes, sir; it was not correct, and it would be contested, and it could not be collected.

(Mr. POE:)

154 Q. At the subsequent meeting on the 24th of March, 1893, you made this agreement with Mr. Harrison, with regard to Thompson's judgment?

WITNESS: The New York?

Mr. POE: The $10,000 judgment.

A. Yes, sir.

Q. Now, what I want to know is whether the advances on the Newfoundland judgment which have been spoken of, were not counted as a part of the $8,500, or thereabout?

A. Yes, sir; he never paid me any money back, he always kept it.

Q. But didn't you count that in as a part of the $8,500?

A. Yes, sir; it was passed over.

Q. Precisely; it was brought over as money, with whatever it was that he had received from you?

A. Yes, sir.

Q. So the $8,500, or the amount advanced on the New York Thompson judgment for $10,000, included all that you had advanced previously on this Newfoundland matter.

A. Yes, sir.

Q. Won't you kindly let me have that bill of particulars, the original papers, Mr. Clerk? The understanding between you in the matter of the Newfoundland judgment, and in the matter of the Thompson judgment was embodied into the agreement, the written agreement that was prepared at the time?

A. They were all contained in the writing.

Q. Well, now, in these agreements, did you have the benefit of counsel, or did you prepare these agreements yourself, without consulting counsel?

A. I had counsel.

Q. You had counsel in all the transactions, then, that you had with him thus far? These two agreements counsel were consulted about?

A. Yes, sir.

Q. Now, then, the next agreement in order of time was one dated the 8th of May; that was the agreement with reference to the Jordan Mountain manganese matter, wasn't it, and that agreement appears on its face to be cancelled July 21st, signed W. J. Harrison, written across it, and F. J. Morton, and the names at the end were erased; the paper was witnessed by Robert F. Hill and Henry Stockbridge, Jr.

A. Yes, sir.

Q. Mr. Robert F. Hill is a lawyer, isn't he, in Washington?

A. Yes, sir; I believe he is.

Q. Counsel for Mr. Harrison?

A. Yes, sir.

Q. And Mr. Henry Stockbridge, Jr., whose name is there, was your counsel in the transaction, is that it?

155 A. Yes, sir.

Q. That is the way it was done?

Q. Yes, sir.

Q. This agreement was prepared by counsel, I suppose; do you remember who prepared it?

A. Let me see it.

Q. Well, it is a typewritten copy, you know. Your acceptance for $10,000 was dated June 2nd, and it appears to have been cancelled, and your acceptance was a qualified acceptance: "Accepted if

accompanied with the deed of Jordan mining property, from F. W. Stockton, and duly registered. Franklin J. Morton." As I understood your recital of these transactions, this agreement was cancelled and replaced by a new agreement of a subsequent date?

A. Yes, sir.

Q. Now, then, that agreement. The next is July 21st, 1893. If I understand your recital, it was then that this transaction with reference to the oil painting took place. I shall only read a part of this. The part which I read is this: "Franklin J. Morton, Dr. to Walter H. Harrison, to 16 oil paintings, large and small, $15,900. Received payment in full, by cash, July 21, 1893. Walter H. Harrison." The above sale by Walter H. Harrison to Franklin J. Morton of the 16 oil paintings, it is hereby agreed and understood by and between them, that Mr. Morton pays Harrison $10,900, and the other $5,000 is a bonus for buying same, and it is hereby agreed and understood that if Harrison returns to Mr. Morton the $15,900, within 6 months from date, or sooner, Mr. Morton will return the 16 oil paintings to him. Now, then, there is, "at the option of Harrison," these words were in the paper; they are erased, and there is a memorandum with an asterisk erased before signing. Now, I ask you, did Mr. Harrison exercise his right to buy these pictures back within the 6 months by paying you the $15,900?

Mr. GANS: We object to that unless the contract is read in connection with the paper.

(Objection overruled.)

A. It was a fictitious thing; I tried to get it insured for him, but I had to keep them without being insured all this time.

Q. That was not the question I asked you; the question asked you was whether Harrison had bought back?

A. I told you the circumstance.

Q. Just pardon me one minute, Mr. Morton, if you please. I asked you the question whether Mr. Harrison bought back these paintings and paid you the $15,900?

A. He did not take them; I have still got them, that is all.

Q. You still have them?

A. Yes, sir.

Q. Mr. Morton, this contract of July 21st, 1893, appears to
156 be, as far as I am myself familiar with your writing, in your handwriting; the body of it, that is correct, is it?

A. Yes, sir.

Q. I am not mistaken; I mean that this is your handwriting?

A. Yes, sir; that is right; that is my handwriting.

Q. Now, the next transaction was with reference to the house 1823, Maryland avenue; the next transaction was in October, 1893, with regard to the house of Mr. Wm. E. Banks?

A. Yes, sir.

Q. You purchased from Banks in October, 1893, and it seems that you signed and delivered a declaration of trust with regard to that property; that is December 22nd, 1893?

A. Yes, sir.

Q. I do not care to go into that, but I come now to the next in point of date, which is August 22nd, 1894. That paper recites that on that date you advanced to Walter H. Harrison the sum of $2,500, for the purpose of securing an extension of time for making completion of the purchase of the property known as the Jordan Mountain Manganese Company property; how did you pay him that $2,500?

A. I think I paid it in bank bills.

Q. Do you remember where you paid that money?

A. I think I paid it in Mr. Stockbridge's office.

Q. You paid the money in Mr. Stockbridge's office?

A. Yes, sir.

Q. Now, that agreement is also a typewritten agreement and appears to be quite formally attested by Mr. Robert F. Hill and Henry Stockbridge, Jr. Well, with reference to this transaction, did you each have the benefit of the advice of your respective counsel?

A. Yes, sir.

Q. Do you know who prepared this contract, Mr. Stockbridge or Mr. Hill?

A. I think Mr. Stockbridge.

Q. Now that comes down to August 22nd. The next agreement was dated the 1st day of November, 1894, between you and Mr. Harrison; I show it to you, sir; this is a copy, but there is no dispute about it, I believe, gentlemen. You cannot tell from that; I think this is the same paper that your counsel produced?

A. This is a copy; yes, sir.

Q. Do you remember who drew that contract up; Mr. Stockbridge is the attesting witness?

A. Yes, sir; Mr. Stockbridge.

Q. Mr. Stockbridge, Jr.?

A. Yes, sir.

157 Q. Well, now, how was that sum of $2,500 paid to Mr. Harrison?

A. I think that was brought up in money up to his office.

Q. Paid in bank bills in Stockbridge's office?

A. In Mr. Stockbridge's office; yes, sir.

Q. Now, this is November 1st, 1894; up to that time had you had any conversation or talk of any kind with Mr. Harrison, with regard to these patent rights in question in this case?

A. Not to my knowledge.

Q. You had not heard anything about this?

A. Not to my knowledge, that I can recollect.

Q. I mean this application that was pending by Campbell for a patent?

A. No, sir; the first I knew, he said Mr. Campbell had an invention up there in his office, and asked me to come up there and look at it.

Q. No, but what I want to know is, was that subsequent to this agreement of November 1st, 1894?

A. I think it was about that time; along there.

Q. About that time?

A. About that time; yes, sir.
Q. So that you advanced him this additional sum of $2,500 for the purpose mentioned, of course, in the contract?
A. Yes, sir.
Q. And you took his note, as you have already stated?
A. Well, he gave me his note.
Q. Well, you took his note; he gave it to you, of course, according to the contract?
A. Yes, sir.
Q. He passed and delivered to you his note?
A. Yes, sir.
Q. And you gave him the $2,500 in money in Mr. Stockbridge's office?
A. Not on account of the note; not on account of the note; he just merely gave me the note in connection with other things.
Q. The note was a part of the transaction?
A. The note was a part of the transaction.
Q. Just as shown in the contract?
A. Yes, sir.
Q. The written agreement truly recites the transaction, does it not?
A. Yes, sir; that is so.

158 Q. Well, now, then up to that time, your present recollection is that you had not heard anything from him about this invention of Campbell, and that letters patent had been applied for?
A. No, sir.
Mr. CARTER: He said about that time.
A. About that time; in November, or along about that time.
Q. I want to know specifically whether you had had any conversation with him prior to that?
A. No.
Q. Now, can you tell when it was that he first brought to your attention this invention of Campbell that is involved in this suit?
A. In my office he spoke to me about it.
Q. About what time, Mr. Morton?
A. Well, the last of November, perhaps.
Q. The last of November?
A. Perhaps; something like that.
Mr. CARTER: What is that; speak out.
A. The last of November; something like that.

(Mr. POE:)

Q. Now, just tell us as well as you can remember, what occurred in that interview between you and him when he brought to your attention in the latter part of November this invention of Campbell?
A. Well, he asked me, he said that Mr. Campbell had an invention up there at his place, and wanted me to come up there and see it; it was a keg machine, and I told him I would go up and look at it.

Q. He asked you to go up?
A. Yes, sir.
Q. Now, at that time, let me ask this question; at that time you were the president of the Campbell Barrel Company, were you not?
A. I was.
Q. And he asked you to go up to his, Harrison's, office?
A. Yes, sir.
Q. And look at a machine up there?
A. Yes, sir.
Q. Well, did he tell you whose machine it was or who was the inventor?
A. He did.
Q. Well, did you go?
A. I did.
Q. You went up there, did you?
A. Yes, sir, at the time he asked me.
Q. You went with him?
A. I did.
159 Q. Well, now, ——?
A. I think I met him there; I think I met him there; I did not go up with him.
Q. He asked you to come up, and you met him there by appointment?
A. Yes, sir; he and Mr. Campbell were both there.
Q. Well, you saw the machine?
A. I saw it; yes, sir.
Q. Now, what was said in the next interview, or in that interview with regard to your acquiring an interest in that invention?
A. Mr. Campbell showed the operation of it, and then Mr. Harrison thought it would be well to have it painted, but I told him it was not matter of mine, and afterwards he had it done and sent the painter's bill to me, and I told the painter that I had nothing to do with paying the bill, and I sent it back and told him to get the money of Mr. Harrison. I didn't talk anything about it, about taking any interest in it; I just listened to what they had to say.
Q. Well, when was it that you had the conversation with him in which you said you would be willing to go in with some gentlemen in forming a company?
A. He came down to the office after that, and said that he had taken that, or that Mr. Campbell had assigned that over to him for a small sum of money.
Q. That was not in the first interview?
A. No, sir.
Q. That was after you had seen him?
A. Yes, sir; and he said he would like to assign it over to me in trust.
Q. In trust for whom?
A. In trust for him.
Q. In trust for whom?
A. For Mr. Harrison.
Q. Well, what was the trust to be, did he say?

A. The trust was to hold it.
Q. He was to assign it over to you in trust for him?
A. For him.
Q. That is what you say he told you he said to you at that time?
A. That is what he asked me to do with it, and I assented to take it in trust for him.
Q. You took an assignment of that patent?
A. He said that there would be some small amounts for getting the patents out to be attended to.
Q. What was the date of that conversation?
A. I couldn't say.
160 Q. Well, how long before the written agreement, that is the subject of this suit?
A. Well, I think it was the last of November.
Q. The last of November he told you that Mr. Campbell had assigned to him for a small amount?
A. Yes, sir.
Q. This invention?
A. Yes, sir; this invention.
Q. And he wanted to assign it to you to be held by you in trust for him?
A. Yes, sir.
Q. Now, when did you next have a talk with him on the subject?
A. Well, I couldn't say; I don't have these things in my mind.
Q. Did you have any other talk with him at all?
A. He dropped in once or twice.
Q. Well, what did you say you were willing to do, when he asked you to take an assignment of it for him in trust?
A. I said I would do so, and take it.
Q. You would take it?
A. I would, yes, sir; he spoke about there being a small expense of getting out the patents *out* in Washington; nothing was said about the foreign patents, but he said, getting out the patents.
Q. He told you there was an application for a patent, but that the patent had not yet been issued?
A. He may have made it that way; that application had been made.
Q. That there was an application pending for the patent and he wanted you to take it, and you said there would be some expense attending it?
A. No, I didn't say so.
Q. He said so?
A. Yes, sir.
Q. What did he ask you to do with regard to the expense?
A. He asked me to pay these expenses.
Q. And you said what?
A. I said I would.
Q. Did you have any other conversation with him upon the subject until the paper of the 8th of December was brought to your office?

A. He came to the office again; he came with Mr. Campbell.

Q. Well, what occurred then?

A. He asked about it being a good thing perhaps to turn
161 over and let the old company be merged in with that, and I thought perhaps it might be a good thing.

Q. You thought that might be a good thing?

A. Yes, sir; might be for the best.

Q. Well, tell us all that was said, as far as you now remember, at that conversation?

A. But I said I wouldn't do anything or pay a cent; I would not pay anything until he paid me back my money that he owed me; not a cent would I advance.

Q. Now I want you to fix the time of that conversation?

A. That is what I told him every time he was in the office; he and Mr. Campbell, both of them, that I would not do anything or take any steps towards forming a company or assist him, or do anything until he gave me back my money that I had advanced him on different things.

Q. Did you state the amount of the money?

WITNESS: What money?

Mr. POE: The money that you claim he owed you.

A. No, I didn't say any amount; I said the money that he owed me.

Q. Now, when you say several times, about how many times did he and you talk about this invention?

A. Well, perhaps two or three times in the office.

Q. And every time you said you wanted your money paid back?

A. Yes, sir.

Q. What reply did he make to that?

A. Well, he said—that was the time he had an option on some land in North Carolina—and he was in process of having it sold in New York, and my money was to come back to me in that.

Q. Well, now then, what was said in any of these talks that you had before the written paper which we call the contract of purchase was signed; what was said, I ask, by Mr. Harrison, about a paper to him in regard to these two notes for $2,500, one that had been given in August, 1894, and the other on the first of November, 1894?

A. Nothing was said about paying them.

Q. You did not hear my question quite, Mr. Morton; what was said about there being a credit on account of this contract price; the contract price that you were to pay?

A. Nothing.

Q. Nothing at all? Well, you had loaned him on the 22nd of August $2,500 and you had again loaned him on the first of November $2,500, and then in the latter part of November, he told you about his interest in this patent right, and you said you would not have anything to do with it unless your money was paid?

A. Yes, sir.

162 Q. Now, I ask you, was it not understood between you and him that a part of the purchase price should be paid by crediting these two notes?

A. No, sir; nothing; not a bit of it.
Q. You stated you wanted your debt paid?
A. I wanted my debt paid, and I would turn him over all his collateral.
Q. Now, what day was this contract of the 8th; what day of the week was it that the contract was brought to your office?
A. December 8th.
Q. Yes, but what day of the week?
A. I think that was Saturday.
Q. What time in the day was it?
A. I think it was in the afternoon.
Q. Had he seen you before on that same day?
A. I think not.
Q. He had not seen you at all. Now, he did come to your office on the 8th of December, did he not?
A. He did.
Mr. POE: He thinks it was in the afternoon; did he bring this agreement with him?
WITNESS: What one is that?
Mr. POE: The one of the 8th of December; the one that we are bringing this suit on?
WITNESS: Let me see it. (Agreement handed witness.) Now, what is your question?
Mr. POE: I say did he bring that on the 8th when he came.
A. Yes, sir.
Q. He brought that?
A. Yes, sir.
Q. Well, did you read it?
A. I glanced over it.
Q. And you say you glanced over it; do you mean to say that you did not read it?
A. I say I glanced over it.
Q. Do you mean by that that you glanced over the whole of it; did you glance over the whole of it?
A. I glanced over it and saw what was the substance of it, and then I told him about it.
Q. Now, why did you read this paper, Mr. Morton?
A. To see what he presented to me.
Q. Well, did he present it to you in pursuance of some understanding that he was to present a contract to you?
163 A. No, sir, he did not; there was no understanding that he should present any such a paper.
Q. Well, but was there any understanding that he was to present any paper?
A. No, sir.
Q. You had had some preliminary talk with reference to some sort of understanding that you were willing to buy this thing in trust?
A. No, sir.
Q. Nothing of that kind?
A. No, sir.

Q. You were not willing to take an assignment in trust?
A. I had these things in trust.
Q. I say you had had a talk with him?
A. That is all.
Q. That you were willing to take an assignment of this invention in trust?
A. Why, yes, sir.
Q. Well, then, he came to you on the 8th of December, and he handed you a paper?
A. Yes, sir.
Q. And you glanced over it?
A. Yes, sir.
Q. And that is the paper that you glanced over?
A. That is the paper.
Q. Now, didn't you sign at that same interview; didn't you and he sign it after he had read it?
A. I say I glanced over it and said that it was not right.
Q. Well, do you mean to say that you signed the paper without knowing its contents?
A. Not much.
Q. Well, then, you did know what was in the paper when you signed it?
A. I did; I also know what he said about his agreement with me at the time, and I had witnesses for it too.
Q. Well, but you did know what was in it, and knowing what was in it did you sign it?
A. Yes, sir.
Q. Now you got Carey Coale to witness it?
A. Because the thing is in my mind an arrangement——
Mr. POE: Never mind; just answer my question.

Mr. GANS: He is answering the question; he can explain it; you asked him how he came to do it.

Mr. POE: Well, I will put it in this way; didn't you ask Carey Coale to witness it?
164 A. I called him in there.
Q. And asked him to witness a paper which you had read, and the contents of which you understood; that is correct, isn't it?
A. No, sir; it is not.
Q. Wherein is it not correct?

Mr. GANS: Now let him give his explanation.

Mr. POE: I say wherein is it not correct?
A. I glanced over it, and said it was not right; it was not correct.
Q. And then you signed it, knowing that it was not correct?
A. No, I did not sign it.
Q. You did not sign it?
A. No, I did not sign it then; I did not sign it then.
Q. When did you sign it?

A. I signed it after he had made representations to me and also before my clerk.

Q. But you signed it on that same day, at that same interview?

A. Why surely.

Q. As part of the interview?

A. Yes, sir.

Q. After you had glanced over it?

A. Yes, sir.

Q. Now, I would like you to look at them both, and tell us Mr. Morton, if you signed them both.

A. Yes, sir.

Q. You filled in the date?

A. That is Mr. Harrison's handwriting.

Q. In each of them?

A. Yes, sir.

Q. Now, $100,000 to be paid to the said party of the first part by the said party of the second part, within—then there was a blank there—within blank days. Who filled in that blank?

A. That is the same writing.

Q. When and where was that filled in; at your office, on that same occasion?

A. I cannot say.

Q. Well, now, there appears to be a little blur, I think from folding the paper more than anything else. "Then the said party of the second part hereby buys from the said party of the first part, the said hereinbefore-mentioned machine, device and method for making and forming barrels and kegs, and the said patent and patents when issued, and agrees to pay for the same to the party of
165 the first part, as hereinbefore recited, to wit, $100,000 in money within ten days (it is blurred there), after the allowance of the invention." Who wrote that "ten"?

A. I don't know anything about it; it looks like the same writing.

Q. Now, then, at the end of that "Payments of said forty per cent. of said gross royalties to the said party of the first part, to be made monthly by the said party of the second part, within the first fifteen days of each and every month," there is another blank filled up?

A. Yes, sir.

Q. Filled up by whom?

A. It is the same handwriting.

Q. Well, were these blanks all filled up before you signed the paper?

A. They were all.

Q. Now, third, "Said party of the second part further agrees that he will at once proceed to form and organize a corporation under the laws of Maryland for the manufacture and sale of said patented article, with a capital stock of five hundred thousand dollars; said corporation to be known by the name of blank." Now, when the paper was brought to you, was the name written out, or was the name in blank?

A. Well, that looks like my writing.

Q. It was in blank then, when it was brought to you; who put the words Eureka Manufacturing Company in?

A. I can't say; it looks like my writing.

Q. You say it looks like your writing; don't you know your own writing; isn't it your writing, Mr. Morton?

A. I say it looks like my handwriting.

Q. Well, but won't you come a little bit closer than that to it; I think it looks like it, too.

A. I can say it looks like my handwriting.

Q. Well, you have said that three times, but will you so testify?

A. I say that I don't recollect it.

Q. Well, but isn't it; have you any doubt that you wrote it, now, from looking at it?

A. It looks like my handwriting; that is all I can say.

Q. Didn't you read it before you signed it?

A. I didn't read it; I know that.

Q. Didn't you fill up and complete this contract by filling in the very name of the corporation, in your own handwriting?

A. Everything was done before it was signed.

Q. Everything that was in the paper was in that before you signed it?

A. Before it was signed; yes, sir.

166 Q. Well, now, this paper appears to have the signature; it appears to have two attesting witnesses—first Carey Coale and then Henry Campbell. Now, was Henry Campbell's name put on that paper as an attesting witness on that eighth day of December?

A. It was not.

Q. It was not?

A. No, sir.

Q. Then it is "Test—Carey Coale" to your signature, and then Henry Campbell?

A. Yes, sir.

Q. And that signature was not put there by Henry Campbell on that day?

A. No, sir.

Q. So that the papers, as they are now produced, are exactly as they were when you signed them, except that afterwards the name of an additional attesting witness, Henry Campbell, was added?

A. Yes, sir.

Q. Now, where was that signature added?

A. It was done in my office.

Q. With your consent?

A. It was done by Mr. Harrison.

Q. With your consent?

A. I didn't object to it; I didn't protest any.

Q. Had not Mr. Watson said something to you in the interval between the 8th of December, when these contracts were first signed, and the subsequent day, whatever it was, when Henry Campbell signed as an additional attesting witness, with regard to the necessity of having two attesting witnesses to assignments of patents?

A. I don't recollect.
Q. You don't say that he did not tell you that?
A. I say I do not recollect any such conversation.
Q. Well, now, after you had signed that paper, in the way that you have mentioned, these two papers, what did you do with them?
A. I put them in my safe.
Q. You put them in your safe?
A. Yes, sir; I put them in my safe.
Q. Now, I ask you whether on the same day on which that agreement, these two agreements of purchase, as we call them, were signed, whether you did not receive from Mr. Harrison the paper that I now show you, being an assignment?

WITNESS: Whether I didn't receive it?

167 Mr. POE: Yes, didn't you get that from Mr. Harrison at that same interview?

A. I think I did.
Q. Well, did you not ask your clerk, Carey Coale, to witness it?
A. Yes, sir; whenever his signature is found, it was always at my request.
Q. So you took this assignment from Harrison and called on your clerk to witness it?

Mr. WHYTE: What is the date of that, Mr. Poe?
Mr. POE: 8th of December.

A. Yes, sir.
Q. John Watson, Jr., was not there then, was he?
A. No, sir.
Q. He was not?
A. No, sir.
Q. And yet this paper, when it is produced, has the signature of John Watson, Jr., under the signature of Carey Coale, attest?
A. I can't explain that.
Q. How did that get there?
A. I don't know.
Q. Is it not a fact that subsequently having had your attention called by Mr. Watson to the fact that the department would not record assignments that did not have two attesting witnesses, you asked John Watson to witness that, so as to give it too?
A. No, I cannot say any such a thing, but Mr. Harrison, he was always the one.
Q. I understand that.
A. He was always the one that wanted things done; he was the one always that did the talking, if anything was done; I think it was probably him.
Q. Explain to me then, how Mr. Harrison got that paper, if, as you say, he left it with you, on the 8th of December?
A. I cannot say.
Q. And got Mr. Watson's signature on it?
A. I cannot say, I am sure.
Q. That is Watson's signature?
A. Yes, sir.

Q. Didn't you see him put his name there?
A. I am not sure whether I did or not.
Q. Do you say you did not?
A. I don't say I did not, because there is the signature, I know that.

Mr. WHYTE: Mr. Watson said he told Mr. Morton.

168 Mr. POE: Mr. Watson's testimony was that he told you it was necessary to have a witness?
A. Yes, sir; he may have.
Q. And that you then said that if there was, that you asked him to sign as a witness?
A. I don't know anything about it, I don't remember anything about it; I do not.
Q. This assignment of the 8th, now here is a paper, this is marked "duplicate," a duplicate of that same assignment?
A. Yes, sir.
Q. And this is the one that was left with you, and that is the one that Harrison had?
A. Yes, sir.
Q. Both of them had the signature of John Watson, Jr., to them. So he left with you this paper which was witnessed by Carey Coale, and subsequently witnessed by John Watson. Did you read that assignment?
A. I did not.
Q. You took a paper and called your clerk to witness it without reading it?
A. Yes, sir; he brought it to me as a part of the business, of his trust that he put in my hands.
Q. You say you accepted a paper and called one of your clerks to witness it without knowing what was in it?
A. I did it in that way; I thought it was a part of the trust he put in my hands to carry out.
Q. Didn't you read it to see what there was in trust; is that the way you deal with papers of importance?
A. I am pretty careful, as a general thing, with some people; I ought to have been more careful this time.
Q. Now, these assignments were simply assignments that were executed in this way, but they do not appear, they have nothing to show that they were ever sent to Washington or recorded. Now, I wish to show you another paper, another assignment, which was produced by your counsel under notice from us; look at that paper and see whether you do not recognize it?
A. I cannot say that I recognize it; as I said, the whole thing was done as a matter of trust; that he asked me to accept in furtherance of it, to get out the patents.
Q. I understand that. You have said that several times; but I want to know, did not you cause this paper to be prepared by Mr. Watson, and did you not pay Mr. Watson for drawing it?
A. No, sir; I did not; no, sir; that is a matter of Mr. Harrison's altogether, the whole thing; he was engineering the whole thing.

Mr. POE: What I want to know is, didn't you know who drew paper?

A. No, sir; I do not.

Q. Don't you know that John Watson drew it?

A. I cannot say; I don't know whether Mr. Watson drew r not.

Q. Didn't you employ Mr. Watson to draw it?

A. No, sir; no, sir.

Q. Didn't you pay Mr. Watson for drawing it?

A. I paid all the bills of Mr. Watson's, as they were signed by Harrison, as being correct.

Q. Didn't that include these costs of drawing this paper?

A. It might have done so; I don't know.

Q. Was not the power of attorney prepared by Mr. Watson?

A. I say the whole thing was done by Mr. Harrison; it was his ole plan; the whole thing.

Q. Do you mean that you signed whatever paper Mr. Harrison sented to you?

A. I did.

Q. Without reading them?

A. Yes, sir.

Q. Very well, you signed that paper?

A. Wherever you see my signature I signed the paper.

Q. Precisely; this paper was sent to you from the Patent Office, sn't it; in due time you got it?

A. If it is among these papers it was received by me.

Q. United States Patent Office, December 11, 1894?

A. Whatever I got I carried up to my attorney.

Q. Very well. "Received for record December 11, 1894, and re-ded," and so on. John S. Seymour. Now, that paper was sent, s it not, from Washington or from Baltimore by Mr. Watson to n, wasn't it, or how did you get it; in other words, how did it me in your possession?

A. Well, it came; I cannot say how it came; I suppose by mail, if it is in my possession, or my attorney's possession, then it me to me.

Q. Your attorneys have produced it.

A. When any papers came to me I just turned them over to my nsel.

Q. You did not give it to your counsel before the controversy se between you and Mr. Harrison?

A. Yes, sir, I did; I turned all the papers over.

Q. You turned all the papers over to Mr. Stockbridge before this t was brought, or before you were notified that there was going be a suit?

A. I cannot say about that; I don't have all these things in memory; I turned everything at some date over to my attorney.

Q. I know, but you were not anticipating any controversy with Mr. Harrison, at the time this thing was done; you ought everything was smooth and pleasant, didn't you?

A. No, I did not; I thought he had gone back on his friendship; I had no confidence in him at all.

Q. And that was when you got this paper from Washington?

A. I cannot say; I know there was a threat of suit.

Q. Now, let me read it; let me refresh your recollection. You got this paper; did you read it when it came back to you?

A. I say that I knew that the matter was done in trust for Mr. Harrison, and I thought he was a true man.

Q. I know; you have said that several times.

A. He said I was the only true friend that he had, and I didn't think he was such a character as to deceive the one that had kept him from the poor-house, you might say.

Q. But what I want to know is this; this paper was prepared by Mr. Watson, and it was sent to Washington; it was received in Washington on December the 11th; it was recorded on that day, and the original in some way finds itself back into your possession?

A. Yes, sir.

Q. Now I want to read it to you. (Assignment of December 11th, read.) Now, where is there any trust in that assignment which you accepted and kept and turned over to your counsel?

A. He knows that.

Q. Well, but I ask you where is it?

A. I say he knows it well; he knows it; he dassent deny it.

Q. Well, but that is not answering my question.

A. I say that is the thing that I say, he knows; that he asked me to accept that trust and that he had received from Campbell for a small sum.

Q. I ask you the question, where there is any trust in that paper? There is none, is there; that is the paper that you got a copy of, is it not?

A. The whole thing was taken in trust for him. That was the whole thing, in carrying out just what he asked me to do; it was a matter of trust and nothing else; it was a trifling thing, the whole thing; the Campbell barrel, the whole thing is a trifling thing.

Q. Now, Mr. Morton, a few more questions. This paper I would like to go along in the order of time, because it keeps it straighter in my mind, and it keeps it straighter in your mind, and it is fairer; this was the 10th of December; received in the Patent Office on the 11th, and although it bears date on the 8th, Mr. Watson has explained that it was dated as of the same day that these first assignments were dated; now, then, as I understand you, you paid some money after this paper of the 8th was signed, and these assignments of Mr. Harrison; amongst others, you paid $300, I under-
171 stood you to say, on the 14th of December, and you paid it to him by a check. Kindly produce your check of the 14th of December for $300.

A. It is there; my attorneys have it. I think it was paid by check.

Mr. WHYTE: He said it was paid by check?

A. I say, I think it was paid by check; I think it was.

Q. While they are looking for that, where was it paid; at your ffice?
A. At my office; yes, sir.
Q. Well, from your check books, find the stub of Dec. 14th?
WITNESS: Dec. 14th?
Mr. POE: Yes, sir.
A. I don't find the check.
Q. In point of fact, Mr. Morton, as far as I can trace it, there is no tub in either of these check books showing a check of that date?
A. I only speak from memory.
Q. Well, if you paid him, then, $300, then you must have paid im in some other way than by check, if you haven't got the check?
A. Yes, sir.
Q. Isn't a fact that you paid him in bank bills?
A. I paid him the money.
Q. Yes, I know that; there is the receipt.
A. I cannot recollect.
Q. We do not repudiate the receipt.
A. Yes, sir; I cannot say how it was paid; I paid him; I know paid him, and took his receipt.
Q. Of course you did not take a receipt from him without paying im the money?
A. No, sir.
Q. We do not charge that; we give credit for that, and as you lid not pay him by check—you had no bank account except in these wo banks?
A. Yes, sir; I may have had money come in during the day.
Q. Of course money may have come in during the day, but if you had paid him by check, it would have been on one or the other of these two banks?
A. Yes, sir, if I had paid him by check—the check went in my private account, you understand.
Q. Of course, if you had given him a check it would have been a check on one or the other of these two banks; these are the only banks in which you did keep any private account?
A. Yes, sir; that is right.
Q. And as we do not find any check, you must be mistaken in your statement that you paid him by check?
172 A. I cannot say how I paid him; I know I paid him that money and took his receipt.
Q. But, of course, now that you do not find the check, you do not insist on your statement that it was by a check?
A. No, I do not say a check, because I don't know how I paid him.
Q. But you paid him, and if you did not pay him by check, you must have paid him in money?
A. I could not say how I paid him.
Q. In gold or silver or currency of some kind?
A. I cannot say how I paid him.
Q. But you do say you did pay him?
A. Yes, sir; I do say I did pay him.

Q. And you must have had three hundred dollars in some shape in your office at that time?

A. I cannot say how it came about that I paid him.

Q. But you had more than $30 or $40 at a time in your office?

A. I don't understand how it was, but I say I paid him; I don't have $1,000 or $1,500 or $500 there.

Q. But you did happen to have three hundred dollars, I will not say how much more than $300; but you did happen to have that on that day?

A. I cannot say. My memory is a blank on that; I said I paid him and took his receipt.

Q. You said yesterday you paid by check?

A. I happened to slip on that, because I generally pay by check, so I thought I paid it by check; how I paid it I don't know.

Q. Mr. Harrison told you, as I understand your statement, at the time you took this thing to take it in trust for him, that there were some small sums to be paid for getting out the patents, and you went on and paid them?

A. Yes, sir.

Q. Would you be surprised if I told you that the various sums that you paid Mr. Harrison that are not included in this bill of particulars from the 14th of December to the 27th of December, amount to $2,700?

A. No, sir; I would not be surprised, because I think he imposed on me; first, he put Mr. Campbell's house rent on me to save him from being turned out in the street; he put that on me, and he put a lot of old machines down in Norfolk on me, and I protested about paying such an amount of money, and he just rubbed his head, and I thought to myself—"Have I got a crazy man that is dealing with me."

Q. Well, you went on?

A. Yes, sir; I did.

Q. Went on to pay?

173 A. Yes, sir; went on and paid; as I said, I took it in trust and I was going to see to it.

Q. Now, Mr. Morton, when you discovered that this thing was not in trust, did you ever make any——

A. (Interposing.) I never discovered it was not in trust.

Q. You never did?

A. No, sir; it was nothing but trust with me.

Q. All trust, was it, with you?

A. All trust; I am sure I trusted him a great deal more than I ought to have trusted him.

Q. Well, did you ever tender to Mr. Harrison any reconveyance of these patents to Mr. Harrison after they had been assigned to you?

A. I certainly would if he had paid me my money.

Q. Then you are holding on because he did not pay your money?

A. I mean to say he did not ask it.

Q. You got the assignment?

A. Yes, sir.

Q. And you kept the assignments?

A. I have got them still, just as I have got his pictures, and I am keeping them for him.

Q. You are holding on to this assignment in the same way?

A. No, sir.

Q. Why did you not give it back to him after you found he had given you an assignment that was not according to your understanding?

A. Well, why didn't he ask me, if you will allow me to modify that?

Q. You can make any explanation, of course.

A. Well, I took it; he said that he had a good thing and he wants me to hold it.

Q. And you want to gratify him by holding it?

A. No, sir; no, sir; I would have nothing more to do with him; he has betrayed my friendship and everything else, and that is all; I don't want anything more to do with him.

Q. Then you got these letters from Mr. Watson, informing you of the grant of the letters patent, did you not?

A. I turned everything over to my attorney.

Q. Did you go to Mr. Watson and make any explanation of how it was that you had come to be the assignee?

A. I cannot say about that.

Q. He notified you, did he not; didn't he send you a package; don't you remember that?

A. Yes, sir; and I refused to take it.

174 Q. I know; that is all right.

A. Yes, sir.

Q. Well, is it not a fact that you understood that applications were being made for foreign patents; did you not authorize these applications to be made?

A. I was carrying out the matter of the trust that he had asked me to accept.

Q. Did you not pay the bill?

A. I paid the bills, after Mr. Harrison signed the bills as being correct; I told Mr. Watson, and Mr. Watson told me he did not know what understanding I had with Mr. Harrison when he came down, and I told him I would not pay bills until they were signed by Mr. Harrison.

Q. If Mr. Harrison said they were correct, then you would pay them?

A. I said it was a matter for Mr. Harrison.

Q. Of course; then was it in pursuance of your understanding that you signed the blank application? That is your signature, I think you said yesterday.

Mr. CARTER: Mr. Watson said it was his signature; he was not asked about it.

Mr. POE: I beg your pardon. This is your signature—"Franklin Joy Morton"?

A. I don't know how I came to write "Joy;" I generally write it "J." Joy is my name, though; that is my name.

Q. Maybe in Great Britain and other foreign countries they like to have the full name?

A. Maybe so.

Mr. WHYTE: Didn't he sign it?

Mr. CARTER: Yes, sir.

Mr. POE:

Q. Now, Mr. Morton, we go back to these agreements of the 8th of December; you put them first, as I understand you, in your own private safe?

A. Yes, sir; I did.

Q. Now, when was it you removed them from your own private safe to your box at the safe-deposit Co.; which one of the safe-deposit companies was it?

A. The Mercantile Trust Co.

Q. When was it you removed them to the Mercantile Trust Co.?

A. I don't remember what date it was.

Q. About how long did you keep them in the unsafe safe at your office, and put them in the secure box at the Mercantile Trust Co.?

A. I have a very good safe at my office, Mr. Poe.

Q. Why did you take these documents from the very good
175 safe you had, and put them in the better safe at the Mercantile Trust Co.?

A. I don't remember the date. Why did I——

Mr. POE: Yes, why did you do that?

A. Well, sir; because I had a box up there that I keep my stocks in.

Q. You consider them valuable papers, I suppose, do you not?

WITNESS: What do you mean?

Mr. POE: You do not put trifling papers in your box at the Mercantile Trust Co.?

A. No, sir; I put my valuable papers in my box.

Q. You put your coupon bonds and securities, and your valuable papers?

A. Yes, sir; I do.

Q. And you put these amongst your valuable papers there?

A. I did; yes, sir.

Q. But you cannot tell when?

A. No, sir; I cannot remember the date.

Q. When Campbell and Harrison came down there on the 22nd of December, you had not taken them up to that date?

A. No, sir.

Q. Because you still had them?

A. Yes, sir.

Q. And that was the time that Campbell's name also was put on as an additional witness?

A. Yes, sir.

Q. You saw Mr. Harrison put that endorsement on the contract on the 22nd day of December, didn't you?

WITNESS: Mr. Harrison?

Mr. POE; Yes, sir.

Mr. CARTER: What endorsement?

Mr. POE: That endorsement of the credit of $1,500.

A. Yes, sir; I saw that.

Q. It was put there with your consent, was it not; you did not object?

A. No, sir; I did not object.

Mr. POE: I say you did not object to that endorsement, that was the 22nd of Dec., and after that you put these two papers, with these endorsements, away in the safe-deposit company, in the Mercantile Trust Co.'s vault?

A. Yes, sir.

Q. Now, these transactions between you and Harrison, with regard to the draft for $1,175, I think it was, were they early in January?

176 WITNESS: $1,151.

Mr. POE: $1,175, wasn't it?

A. $1,151, I think.

Q. I think the draft was $1,175, the draft that came from the Chatham National bank, that you refused to accept and pay?

A. $1,151, I think it was.

Q. Well, $1,151 or $1,175, you let it go back and did not pay it, and then you lost confidence, as I understand you, in Harrison, at that time?

A. I made up my mind to have nothing more to do with him.

Q. Did you send to him or go to see him, and make any explanation about this transaction?

A. No, sir.

Q. You still kept the papers?

A. I still kept the papers.

Q. Until he called on you to comply with the contract?

A. No, sir; he came to my office.

Q. He came to your office?

A. Yes, sir; after he had been sick.

Q. You did not send him any word that you had lost confidence in him, and were not going on with these transactions?

A. He sent word he wanted me to come to see him, and said he was sick.

Q. Did you go?

A. No, I did not.

Q. You did not?

A. No, sir.

Q. Now, do I understand you to say that when he came and you had an interview, that you asked him to go with you to the Mercantile Trust Company and destroy these papers?

A. To cancel these papers.

Q. To cancel them?

A. Yes, sir.

Q. I thought you used the word "cancelled;" is destroyed the same as cancelled?

A. It is the same thing——

Q. You asked him to destroy the papers, was your statement as I remember——

Q. To go with me and my clerk to the Mercantile Trust Company and let him destroy or cancel those signatures.

Q. He did not agree to do it?

A. He said he would not; he also said they should be of no value—no injury to me—no loss to me.

Q. You did not say that yesterday?

177 A. I say so now; I said then—I say now he said in the presence of my clerk there should be no injury and no loss to me.

Q. You said they should be no value—you used the word value?

A. No loss or injury to me.

Q. He said there should be no loss or injury to you?

A. Yes, sir; he said there should be no loss or injury to me.

Q. Is that all that occurred; try to remember the whole conversation if you can—if there is anything else?

A. He then asked me to pay that draft, and I told him to go up with me and cancel those papers and I will see about that.

Q. Which draft?

A. The draft that come from New York.

Q. You said that if he cancelled the papers you would see about paying the draft?

A. That's what I said——

Q. You did not say that yesterday?

A. I say it now.

Q. Is there anything else; have you told us all you remember?

A. I said, I will see about it—to cancel those papers and then I would see about that; that was all.

Q. You wanted him to cancel the papers, and you said if he would cancel the papers you would see about whether you would pay the draft?

A. I said I would see about that.

Q. Can you fix the date of that conversation?

A. No; I cannot; it was after he come back from North Carolina and was sick and then come to my office; that was the time; I don't remember the date.

Q. Can you tell the date Mr. Watson sent you down letters patent by a messenger boy and you refused to receive them?

A. I can tell it by the dispatch, I suppose.

Q. Was that conversation before that or after?

A. It was before that.

Q. Before you had been informed letters patent had been granted?

A. I think that was before.

Q. Had you not been notified in December, about the 18th or 19th of Dec., that the patent, or the applications for the patent had been allowed, as they call it; you understand my question?

A. Yes, sir.

Q. Were you not notified about the 18th or 19th of December, that the Patent Office had allowed the application?

A. Perhaps so, I cannot say; I only know this, if I had been

notified it would have been in the mere matter of the trust I
178 assumed for him carrying out the idea of having him get out the patent.

Q. Do you remember how you were notified?

A. No, I can't say.

Q. You do not know the shape in which the notice came—you do not recall that?

A. If there was such notice it was probably from Mr. Watson.

Q. What I want to get at is this; I only want to bring these dates to you, so you can understand my question properly and fairly; you think your interview with Mr. Harrison was before you had heard from Mr. Watson the letters patents had been actually issued?

A. I can't say that; I don't remember; I can't remember that; he came to the office, it was after he came back from North Carolina, after he had been sick; that was the time that I spoke to him about going up to the Mercantile Trust Company and let my young man cancel those signatures.

Q. Was that the last conversation you had with him?

A. That was the last time I had any business or talk with him.

Q. You had then, if I understand you, all the papers, though, in your personal custody and possession at that time; you had not given them to Mr. Stockbridge, your counsel at that time?

The WITNESS: What time?

Q. When you had this conversation with Mr. Harrison?

A. I can't say what date I did give them to him.

Q. You wanted him to go down to the trust company to destroy or cancel them, and they must therefore have been down there—those agreements?

A. Yes, sir; that was in the Mercantile Trust Co.; that is so.

Q. Let me see if I cannot refresh your recollection as to the date of that interview; was it not somewhere about the — of January, 1895, that interview with Mr. Harrison took place?

A. It was after he came back from N. Carolina.

Q. And you say after he was sick.

A. After he was sick.

Q. Did you not testify that he sent you word that he was sick?

A. Yes, sir.

Q. And asked you to call and see him?

A. Yes, sir.

Q. And you did not call?

A. No, sir.

Q. After he got out he came to see you?

A. Yes, sir.

Q. Was not that about the 22nd of January?

179 A. It might have been; I can't say; I have no way of thinking or remembering about it.

Q. He came down to your office?

A. He did.

Q. Did he say nothing to you when he came in; you haven't told us——?

A. I also demanded of him the keys of that house 1821 Maryland

avenue; I told him I wanted to see if I could not rent it; it had been idle there, and I sent word to his son, and his son promised to give me the key, but he had not done it.

(By Mr. POE:)

Q. He came to your office—did you open the conversation or did he?

A. I did; I opened the conversation with him.

Q. You did not give him a chance to say anything—you opened on him?

A. I opened on him.

Q. At all events that was the interview during which you asked him to go with you and your young man up to the Mercantile Trust Company to destroy or cancel those papers?

A. Yes, sir.

Q. That was the time when he refused to do it?

A. He refused to do it.

Q. What business were you engaged in at the time of these transactions with Mr. Harrison?

A. The South American business.

Q. Were you not individually engaged in some patent operations or president of companies of one sort or other?

A. I was president of the Campbell Barrel Machine Co.

Q. Is that the only company you were connected with?

A. President of the Mt. Airey Fertilizer Co.

Q. You were president of the Campbell Barrel Machine Co.?

A. Yes, sir; and treasurer of the Crown Cork Seal Co.

Q. The Crown Cork and Seal Co. was a company engaged in selling a patented article, was it not?

A. Yes, sir.

Q. And granting licenses, of course, and carrying on the business of selling a patented article?

A. Not granting licenses, but merely carrying on that business under a patent.

Q. Were there any patent rights of any description you were interested in about that time?

A. I don't recollect; I was interested in some other companies.

Q. Companies engaged in manufacturing patented articles?

180 A. Yes, sir, there was another called the Feed Manufacturing Co.; it was an attachment to boilers to save coal.

Q. Did Mr. Harrison have anything to do with that?

A. No, sir.

Q. Were you engaged in any electric companies at that time?

A. Yes, sir; the Baxter Electric Motor Co.; I was a director in that company.

Q. That was a company that was dealing in some patent, was it not?

A. Yes, sir; working on a patent.

Q. Have you ever bought any patent rights or any interest in any patent rights at any time other than this one from Mr. Harri-

son—I don't mean of him, but of other people—have you engaged in that kind of business transactions, or was this the only patent right you ever went into?

A. I don't generally buy patent rights.

Q. You have bought others—you have gone into patent-right speculations, have you not?

A. Not speculation, but business.

Q. But you have done it in other cases than this one?

A. Oh, yes.

Q. A good many?

A. I will say more or less.

Q. About how many?

A. I can't say how many; I don't keep all my business in my head.

Q. Were there 8, 10, 15 or 20?

A. Say two or three.

Q. Large or small?

A. They promised large but did not develop.

Q. You went into them?

A. Well, I went into them, yes, to see what they would come to.

Q. Sometimes they did not pan out well, and sometimes they did?

A. Yes, sir; that is so, no doubt.

Q. You are a stockholder in the Crown Cork and Seal Co., and its treasurer?

A. Yes, sir.

Q. And the capital stock of that company is $16,000,000, is it not?

A. We do not have any companies around here of that size.

Q. How much is the capital stock of the Crown Cork and Seal Co., of which you are treasurer?

A. I can say that it is $1,000,000.

181 Q. $1,000,000?

A. $1,000,000.

Q. Does that include all the patent rights in other countries as well as this, or only in this country?

A. Only in this country.

Q. How much capital stock has it across the water?

A. I can't say.

Q. Don't you know how much?

A. I don't know.

Q. Are you interested in the patents across the water—in any of the companies across there?

A. I am a stockholder in some of the companies over there.

Re-examined by Mr. GANS:

Q. Mr. Poe has asked you about your connection with some other corporations which involve patent rights, and among others asked you about the Crown Cork and Seal Company; that is a corporation doing business in the city of Baltimore?

A. Yes, sir.

Q. What does that corporation do?

A. They manufacture machines and parts, and then they manufacture the Crown cork and seals that are put in bottles.

Q. They are operating under a patent?

A. Yes, sir.

Q. You are a stockholder in that company?

A. I am.

Q. And treasurer?

A. Yes, sir.

Q. And that is your only connection with it?

A. Yes, sir.

Q. Who else is connected with it?

A. William Painter and Joseph Friedenwald, and a good many friends and people in the city.

Q. All substantial men in the city of Baltimore?

A. Yes, sir; all good men.

Q. Mr. Poe also brought out that you were in the Baxter Electric Motor Co.; that was a corporation to build motors for street railways?

A. Yes, sir.

Q. Who is in that with you?

A. Jesse Hilles was president.

Q. In the coal business?

A. Yes, sir.

Q. Who else—Mr. De Ford?

182 A. Yes, and other business men.

Q. Was not George Jenkins in it?

A. Yes, sir; and Mr. Frank De Ford and numbers of other business people in the city.

Q. Mr. De Ford is the hide and leather man?

A. Yes, sir.

Q. Was not Mr. B. F. Smith, president of Hopkins Place savings bank, in it?

A. Yes, sir; he was one of the directors.

Q. He also spoke about the Mt. Airey Fertilizer Co.; that is just an ordinary fertilizing company—there is no patent connected with that, is there?

A. No, sir; we have a deposit of marl down on the Potomac, and a company was organized and is doing a fertilizing business.

Q. Very successful business?

A. Very successful; Mr. Levering and others are in it.

Q. And that is the extent of your connection with those companies that Mr. Poe has asked you about, and these patents?

The defendant, further to maintain the issue on his part joined, called ROBERT C. DAVIDSON on his behalf, who testified as follows:

Q. Mr. Morton testified yesterday that in a conversation that he had with Mr. W. H. Harrison, Mr. Harrison told him that you had offered to advance $50,000 on a certain patent and take the patent

as security; would you be kind enough to state whether you ever made any such offer to Mr. Harrison?

A. I never made any such offer to Mr. Harrison; I have no recollection of ever having had any conversation with him upon the subject.

Q. Has he come to see you at your office at times?

A. I have seen Mr. Harrison at our office from time to time, but never upon the subject of making a loan upon this or any other patent.

Q. You never offered to lend him any money on it?

A. I never offered to lend him fifty cents.

Cross-examined by Mr. POE:

Q. Do you recall ever having any conversation about going into any company for the purpose of manufacturing such a patented article or taking stock in such a company?

A. I think that Mr. Harrison has, from time to time, stated that he had certain schemes on hand in regard to various companies, etc., and I have listened to Mr. Harrison with politeness and courtesy, but never with the intention of taking any interest or lending any money.

(By Mr. CARTER:)

Q. And you never led him to believe you would do either?

A. No, sir; under no circumstances.

183 H. LEE BOLLING, a witness previously examined on behalf of the defendant, being recalled by him, testified further that he was present at a conversation when Mr. Harrison called in January, 1895, at Mr. Morton's office.

We were in the large room; I think that is the way it is described in the plat. I sat at the desk. As soon as he came in Mr. Morton spoke to him about the key of the Maryland Avenue house, 1821; Mr. Harrison says, "Why, are you going to take it out of my hands and give it to somebody else to rent?" Mr. Morton said, "The house has been idle long enough," and he wanted to rent it and get somebody in the property; he said, "If you have any one, send them to me." Afterwards, Mr. Morton says, "I want you to come up and go to the Mercantile Trust Company with me and my clerk and let him *destroy or cancel* the signatures on this contract." Mr. Harrison refused to do it, stating that there should be no loss or injury to Mr. Morton. As soon as he came in the door he says, "Are you going to let me die;" Mr. Morton said, "No; I have sent up to your house to inquire how you have been."

Cross-examined by Mr. POE:

Q. Can you fix the date of this conversation at Mr. Morton's office in January, 1895?

A. I cannot fix the exact date; it was some time in January; the middle or latter part of January.

Q. It was, however, after you had called at Mr. Harrison's house?

A. It was. I called there by direction of Mr. Morton to get Mr. Harrison to come down to the office; Mr. Morton wanted to see him, and also to get the key for 1821 Maryland avenue.

Q. It was not to inquire about his health, or ask him how it was?

A. Not the first time; the second time I went there to inquire after his health. I had been there three or four different times, I think. Mr. Harrison, Mr. Morton and myself were present at the conversation in the office; no one else.

Q. Do you undertake to give us the exact language that occurred, or only the substance of the conversation as you remember it?

A. That is the exact language, as well as I remember it.

By Mr. WHYTE:

Q. What was the word used in regard to this paper—destroy or cancel?

A. As well as I remember, I think it was both.

Q. He did not say destroy and cancel?

A. I can't recall to mind exactly now—it was destroy and cancel the papers—the signatures.

Q. Destroy or cancel—you cannot remember which was the word used, or whether it was both?

A. No; I can't call the exact words.

(By Mr. POE:)

184 Q. I would like you to try and tell us exactly the words that were used with reference to these papers; I don't care about the key of the house; I don't care to go into that; tell me exactly what Mr. Morton said to Mr. Harrison in your hearing on that occasion.

A. He said he wanted to go to the Mercantile Trust Company and cancel the signatures on those papers; Mr. Harrison refused to do it.

Q. He wanted Mr. Harrison to go with him?

A. Yes, sir; *and myself, and for me to cancel them.*

Q. Go where?

A. To the Mercantile Trust Company.

Q. For what?

A. To cancel the signature to those papers.

Q. To cancel the signatures to the papers?

A. Mr. Morton wanted Mr. Harrison to go to the Mercantile Trust Company with me, and for me to cancel the signatures to those papers.

Q. Mr. Morton wanted Mr. Harrison to agree that you should cancel the papers?

A. He said, "Let my clerk cancel the signatures."

GRAFLIN COOK, called by defendant, testified that he is the secretary of the Campbell Barrel Machine Co., and has been since the organization of the company.

Q. We find in this book of minutes, the record of a meeting that took place on the 19th of January; will you be kind enough to state in whose handwriting those are?

A. (After inspection.) Judge Fisher told me that Mr. Watson wrote them.

Q. Was this book, then, at that time, at Judge Fisher's office?

A. Yes, sir.

Q. A certain proposition from Mr. Campbell, dated the 16th of January, 1892, with reference to the issue to him of $90,000 worth of stock, is recorded on this book of minutes in Mr. Watson's handwriting; have you looked for the original of that proposition?

A. I have.

Q. What has been the result of that search?

A. I have been unable to find it.

Q. It is not in your office now anywhere—so far as you know, was it ever in your possession—the proposition of Mr. Campbell?

A. That I cannot say.

Q. You have searched for it and it is not in your possession now?

A. No, sir; it is not in my possession now; I have searched for it.

Q. Have you any knowledge at all of what became of it?

A. No, sir.

85 Cross-examined by Mr. WHYTE:

Q. Did you ever see it?

A. I think so.

Q. Do you swear that you ever saw the paper such as is recorded in there signed by Henry Campbell?

A. No, I will not; but I asked Judge Fisher about the paper, and he told me it was quite all right, and he was prepared to say that he drew the paper up if any trouble arose.

Q. Who?

A. Judge Fisher.

Q. Before that meeting recorded there on the 19th of January, 1892, do you know who owned that patent?

A. I think they were Mr. Campbell's patents.

Q. It was Mr. Campbell's patent originally, but do you know who had the legal title to it at that time?

A. I think Mr. Campbell.

Q. Do you not know anything to the contrary of that?

A. No, sir.

JOHN WATSON, JR., recalled on behalf of the defendant.

(By Mr. CARTER:)

Q. Look at the book now shown you and at the proceedings in that book dated Jan. 19th and state whether those proceedings, to-

gether with what is stated to be the proposition of Mr. Campbell to the company, and also the resolution of the company offered, I think, by Mr. Rosenthal, were all of those proceedings in your handwriting?

A. Yes, sir.

Q. The proceedings show that the meeting took place at Judge Fisher's office; at that time you were in his office, were you not?

A. Yes, sir.

Q. Just look at that and read right there for the information of the court about Mr. Campbell's proposition (the witness reads from the minutes).

Q. Then the proposition of Mr. Campbell is in quotation marks in your handwriting?

A. Yes, sir.

Q. Did you make a true copy of the paper that was handed to you to record in that book?

A. To the best of my knowledge, I did.

Q. The whole thing is written up by you?

A. It was intended to be a true copy of the papers given to me to write.

Q. You would not have put in that book a paper unless it was before you to be put in there, would you—you would not have copied into that book except what was before you?

A. I could not state positively now that the paper which I
186 copied was one which had Mr. Campbell's signature to it; these copies in here are transcripts from papers handed to me.

Mr. WHYTE: Were you secretary of that meeting?

A. No, sir.

(By Mr. CARTER:)

Q. Who gave you those papers to copy?

A. In all probability, Judge Fisher.

Q. If he did give them to you, you copied them correctly, of course?

A. Yes, sir.

Q. To the best of your recollection, Judge Fisher gave the paper to you which you copied in the minutes?

A. Yes, sir.

Q. You probably have no knowledge of any search being made in Judge Fisher's office for these originals—you are not in his office at present, I believe?

A. I am not in his office, but yesterday afternoon I went to his office and inquired from his clerks there if they had any of these original papers, and I got them to make a search with me for them to see if they could find them.

Q. You were present——

A. I could not say in whose handwriting these original papers were; these were formal minutes gotten up at the incorporation of this company, and so far as I can strengthen my recollection in the absence of any record I made at the time, it was in this way—that

Judge Fisher first made a rough draft of the minutes which were then used at the meeting—at least were taken into the meeting; I was not present at the meeting; in some instances, in the formation of corporations, not only this one, but others, he has given me the minutes in his own handwriting, roughly, and I have put them into typewritten form before the meeting; in what shape this was I could not say; I found nothing in his office yesterday evening when I made search.

Q. They were prepared, knowing what was designed to be done at the meeting, in advance?

A. He always prepared them in advance, in the formation of corporations.

Q. Then they were given to you?

A. Then gave them to me; and I would in the ordinary course, after the meetings were held—they were all probably written at one time by me in this record book and a blank left for the secretary to sign.

Q. For instance, the meeting of the incorporators and directors of the Campbell Barrel Machine Co. held on the 18th of Jan., 1892, is that in your handwriting, too?

A. Yes, sir.

Q. And that was, to the best of your recollection, written up in the way you have described?

A. Yes, sir.

187 Q. I find that this proposition at the end of it is dated Jan. 16th, 1892, and the name of Henry Campbell is written in quotation marks; you would not have written the name of Henry Campbell there unless you found it on the paper you were transcribing?

A. That is what I referred to a few moments ago; I could not say now whether the paper from which I copied had Mr. Campbell's signature attached to it or not; of course the name Henry Campbell was there written by somebody; whether it was a mere copy of his offer or the original, I could not say; I do not know that.

(By Mr. WHYTE:)

Q. You cannot say whether there was the original handed to you with Mr. Campbell's signature to it or not?

A. No, sir.

The defendants then offered in evidence the following minutes of proceedings, &c.

"*Minutes.*"

Special meeting of shareholders, January 19th, 1892, at 9.30 a. m., at the office of Fisher, Bruce and Fisher, pursuant to the following notice:

"To the shareholders of the Campbell Barrel Machine Company of Baltimore City:"

Take notice, that a special meeting of the shareholders of said compan will be held at 9.30 o'clock a.m., Jan. 19, 1892, at the office

of Fisher, Bruce and Fisher, southwest corner Smith and German streets, Baltimore city, to consider and act upon a proposition of Henry Campbell to subscribe for $90,000 of the capital stock of said company, payable by an assignment of his rights to patents, &c.

Jan. 18th, 1892.

(Signed) JACOB S. ROSENTHAL, *President.*

On motion of J. S. Rosenthal, S. G. B. Cook was called to the chair. Mr. Cook took the chair.

Call of the stock being made, every shareholder was present in person, and no other person but the counsel of the company.

It was moved that Mr. Gottleib act as secretary. Mr. Gottleib acted then as secretary.

The president then read the proposition in writing of Mr. Campbell to subscribe for $90,000 of the shares as follows:

To the shareholders of the Campbell Barrel Machine Company of Baltimore City:

The undersigned has made application to the Government of the United States to issue to him letters patent for crozing machine and for setting up machine, for the preparation of materials for and the manufacture of barrels, kegs and other packages, the dates of which applications are October 26th, 1891, November 20th, 1891,
188 and October 29th, 1891, respectively, and their several serial numbers are 409,869, 412,529 and 410,206, and he intends soon to make application for patents therefor in the Dominion of Canada, the said machine being entirely novel, his invention, and said invention is of extraordinary practical utility, and is believed to be of very great commercial value.

He now proposes that he will assign to your company all his right in said inventions and said applications, and to the patents therefor when issued, as well by the Dominion of Canada as the United States of America, and to enter into a covenant that your company shall be entitled to any improvements which he has made or shall hereafter made to the said machines, or in the principle or process claimed by him, and in any invention which he may make or discover, or receive by assignment or otherwise, for the preparation of the material for and manufacture of barrels, kegs or packages; and that he will assign them accordingly to said company for the sum of ninety thousand dollars in the capital stock of the said company fully paid and non-assessible, together with the covenant of the said company in due *from*; that it will pay to him, his executors, administrators and assigns, one-fifth part of the gross amounts which may be received by it from time to time for royalties for said inventions and rights for which patents have been or may be applied for, and that such one-fifth part shall be paid monthly, when the same may be received by the company on barrels, kegs or packages made during the previous month; and that said one-fifth part shall be payable before and in preference to any payments for dividends to the shareholders, and to any other payments whatsoever.

It is to be understood that said company is to pay all expenses which said Campbell shall pay for applications for patents in the United States and Canada, in relation to any of the matters herein stated.

HENRY CAMPBELL.

Balto, Jan. 16, 1892.

On motion of Mr. Rosenthal, seconded by Grafflin Cook, the following resolution was adopted unanimously:

Whereas, Henry Campbell has made a proposition in writing to the stockholders of the Campbell Barrell Machine Company to transfer to said company his inventions for crozing machine and setting up machine, with all future improvements and inventions for the same purpose, with his applications for patents therefor in the United States and Canada, and his covenant, as stated more fully in said writing just now read to the shareholders, and the said inventions are necessary and appropriate to the business of the company, and are believed by the shareholders to be of extraordinary value, and worth far more than $90,000.

Be it resolved, That the proffer of Mr. Campbell be and it is hereby accepted and that his subscription to said number of shares be received, to be paid for as full- paid and non-assessible shares in the manner stated in his said proposition, and that the president and secretary of the company be authorized to issue a written certificate for said stock to him on receipt of the assignment and covenant by him as required by said proposition, in a form satisfactory to them, and to issue an engraved or lithographed
189 certificate or certificates therefor to him or his assigns upon surrender of such written one, and said president is also authorized to sign the covenant on behalf of this company as mentioned in said proposition, and to place upon it a scroll seal, and designate it as the corporate seal, and the same is now, for such purpose, adopted as the corporate seal of this company.

On motion, adjourned.

FRED. H. GOTTLEIB, *Secretary.*

The defendant offered in evidence the above minutes of the proceedings of the stockholders of the Campbell Barrel Co., of January 16th, 1892, containing the proposition of Henry Campbell to sell certain inventions and his patent thereon, to the said company, and certain contemplated improvements thereon; but the plaintiff objected to the admission of said minutes, and asked the court to exclude the same; but the court refused so to do, but admitted the same in evidence, and the plaintiff excepted to the admission of the said minutes and prays the court to sign and seal this, his sixth bill of exceptions, which is accordingly done this 18th day of February, 1896.

JOHN J. DOBLER. [SEAL.]

After offering the evidence set out in the foregoing bill of exceptions, which is hereby made part hereof as if it was herein incorporated—

FRANKLIN J. MORTON was recalled for further cross-examination by the plaintiff, and testified as follows :

Mr. WHYTE: Mr. Morton, did you have an interview at your office on the 24th of December, 1894, between yourself, Mr. E. N. Whiton and Mr. Harrison?

A. There was a man that came into the office, who was introduced as Mr. Whiton; that was the name, and Mr. Harrison did the conversation.

Q. You then had a conversation with Mr. Harrison in the presence of Mr. Whiton?

A. No, sir; Mr. Harrison had this with Mr. Whiton; I do not recognize that man (indicating); I don't know whether I ever saw him or not, if that is the man.

Q. Well, that doesn't happen to be the man.

A. Oh, is it not?

Q. Some conversation then did take place between you and Mr. Harrison in the presence of Mr. Whiton?

A. I don't recollect.

Q. Don't you remember anything about it?

A. More than he brought him in and introduced him as a man who was going to pay the money over; bring it over himself from New York, some money from the sale of land in North Carolina; that is the purchase of land, the sale and purchase of land.

Q. Mr. Whiton was the man who was to receive the money, was he not?

190 A. Mr. Whiton was the man who was to bring it over from New York the first day after New Year's and pay it to me.

Q. Well, this was the day before Christmas, though, that I have reference to?

A. Well, I say it was a little before New Year's day.

Q. To be settled before New Year's day?

Mr. CARTER: No; to be settled the day after New Year's day.

Mr. POE: Whiton was the man that was to bring the money over to him, he says.

A. That is what Mr. Harrison said he was going to do, and this man said he was going to do it.

(Mr. WHYTE:)

Q. What money was that?

A. The money that came from the sale of the land down in North Carolina.

Q. Who had sold it—Mr. Harrison?

A. Mr. Harrison had sold it, yes; he had sold it to a party, a syndicate over in New York.

Q. Are you not mistaken; was not Mr. Whiton a man to whom Mr. Harrison owed some money?

A. No, sir; I am not mistaken a bit; I just know the whole thing.

Q. Did Mr. Whiton give you his signature for any purpose whatever?

A. Not to my knowledge.

Q. Did he not bring it on paper or an envelope, his signature for you, that you might recognize it if it was presented to you afterwards?

A. I think he gave me his address.

Q. You think he gave you his address?

A. Yes, sir; I think he did.

Q. What was the object of giving you his address, if he was coming over here to bring some money?

A. Well, that is what he was going to do; he was going to bring money over from New York.

Q. Now, wasn't it that he was going to get some money from Mr. Harrison through you?

A. No, sir; not a bit.

Q. Now, I ask you, didn't you tell him that you would pay the money that Harrison owed him, as soon as you floated the stock of the company?

A. No, sir; I did not.

Q. You did not say anything about that?

A. No, sir; nothing like that at all.

Mr. WHYTE: That is all we want to ask Mr. Morton.

E. N. WHITON, witness called and sworn for the plaintiff in rebuttal, testified as follows:

191 Direct examination.

(By Mr. WHYTE:)

Q. Mr. Whiton, were you present at Mr. Morton's office in the city of Baltimore on the 24th of December, 1894?

A. Yes, sir.

Q. Look at that gentleman at the end of the table; did you see that gentleman there?

A. Yes, sir; I recognized him.

Q. Did you know Mr. Morton before that?

A. No, sir; Mr. Harrison introduced me to him that day.

Q. You did not know him before?

A. No, sir.

Q. Who went there with you?

A. Mr. Harrison and I went to Mr. Morton's office.

Q. Well, now, will you please state what took place at that interview between Mr. Harrison, Mr. Morton and yourself?

Mr. WHYTE: Now, Mr. Whiton, state, if you please, whether anything was said by you to Mr. Morton on that occasion, that you were to bring over some money the next day after New Year's to pay for some land in North Carolina, or what was said in regard to money?

A. There was nothing of that kind said. Mr. Harrison took me to Mr. Morton's office to get some money, $16,000, and it was about

ten o'clock in the morning, and we went into the office and waited; I think we were probably half an hour waiting for Mr. Morton to come; when Mr. Morton came Mr. Harrison and he went into an inner office, and were in there for a few minutes, and then they came out and Mr. Harrison introduced me to Mr. Morton, and we then all three went into this inner office. Mr. Harrison said to Mr. Morton, "Will you pay Mr. Whiton $16,000 today," and Mr. Morton said that he couldn't do it that day; he said that his paying it depended—he said *that he had a contract with Mr. Harrison, and that in carrying out that contract, that he was organizing a stock company, and that his being able to pay this money to Mr. Harrison for my account or otherwise, depended upon his floating and placing the stock of that company.* I told him that I was very anxious to have this money before the first of January, and asked him, if I remember rightly, if it would be agreeable to have me draw a draft on him from New York, and he said that he would let me know if that would be a convenient way, and let me know when to draw a draft on him, and asked me for my signature.

A. Well, did you give him your signature?

A. I gave him my signature; I think I wrote it in pencil on a piece of paper, or perhaps on the back of an envelope.

Q. Do you remember upon what you wrote your name, upon what sort of paper did you write your name, do you remember that?

A. I think it was on the back of an envelope, or perhaps on the reversed side of an addressed envelope.

192 Cross-examination.

(Mr. Carter:)

Q. Where do you live?

A. Piermont, New York.

Q. Where is that?

A. Piermont, Rockland county, New York.

Q. Where is Rockland county?

A. It is one of the south—southernmost counties in New York State. 25 miles from New York, up the Hudson river.

Q. Down on the Jersey coast, you mean?

A. No, sir; yes, sir; it joins New Jersey on the south.

Q. Near Sandy Hook?

A. It is not in Jersey; it is in New York; it is about 35 miles, I think, to Sandy Hook from where I live.

Q. Adjoining what county is Rockland?

A. Orange county on the north.

Q. That is not south of New York; you said south of New York.

A. No, sir; I said in the southern portion of New York State.

Q. North of the city?

A. About 35 miles from New York city.

Q. What do you do?

A. I am a mine-owner and mineral expert.

Q. That is what you were in December, 1894?
A. Yes, sir.
Q. Did you own some land in North Carolina?
A. No, sir; I did not.
Q. You did not?
A. No, sir.
Q. You had no interest in any land in North Carolina?
A. None whatever, sir.
Q. You did not agree to sell Mr. Harrison any land there, then?
A. No, sir.
Q. If he stated that you were the party that was to bring some money over from New York as the purchase-money of some mining interests that he had in North Carolina, that was false; was it not?
A. Yes, sir.
Q. What was this transaction you had with Harrison in which he owed the $16,000?
W. Well, he owed me $16,000 in different sums ever since 1880.
Q. On what transactions?
193 A. The money that I advanced him aside from money that he owed me, as a balance of a running account.
Q. Advanced him for what? State that first.
A. I was a member of a banking firm in New York.
Q. What was the banking firm's name?
A. A. W. Dimmock & Co.
Q. On what security did you advance him this money; I will find out how much it was presently, but first I will ask the other question; how much did you advance him?
A. I advanced him $5,000—$2,500—the first money ever advanced him.
Q. On what security did you advance it?
A. Well, I didn't have any security from him.
Q. You just advanced Harrison $2,500 on no security?
A. I made a business arrangement with Mr. Harrison, and I handed him in New York $2,500, and he drew a draft on me, I should think two or three weeks later, of $2,500 more.
Q. One minute. You first handed him $2,500?
A. Yes, sir.
Q. On what security?
A. Well, to carry out a business arrangement that I was making with him.
Q. What was the business arrangement?
A. It was an industrial enterprise.
Q. Where was it?
A. It was in North Carolina.
Q. Oh, it was in North Carolina, then?
A. Yes, sir.
Q. Well, what was the nature of the industrial enterprise?
A. It was called the North Carolina Beneficial Association; that was the name of it.
Q. What was the nature of it?

A. Well, it was a lottery.

Q. You and he were in a lottery together in North Carolina?

A. No, sir. I have been in North Carolina, but never with Mr. Harrison; I have passed through North Carolina, on my way to Florida, but that is all.

Q. But you were interested in a North Carolina lottery?

A. Yes, sir; in 1880.

Q. And you advanced him $2,500 in 1880?

A. Yes, sir.

Q. To put in the lottery, was that it?

A. Yes, sir.

194 Q. Without any security?

A. No security except my interest in the lottery business.

Q. Well, had you an interest in the lottery business then?

A. The lottery business never came to anything.

Q. Well, was this the same thing?

A. Yes, sir.

Q. Well, then, had you known Harrison before?

A. Yes, sir.

Q. Where had you known him?

A. At New York, at my office.

Q. In what relation?

A. Well, he lived about a mile from me further up the river.

Q. Well, what was he doing when he lived there?

A. He was interested in organizing this lottery business.

Q. Well?

A. And he was introduced to me as a gentleman, and he came down and opened an account with my banking firm, and was there.

Q. How much money did he put in before 1880?

A. Several thousand dollars; I cannot say without reference to my books.

Q. Several thousand dollars?

A. Yes, sir.

Q. Before 1880?

A. Yes, sir.

Q. Did he have any in there when you advanced the $2,500.00?

A. No, sir; he did not.

Q. He hadn't a dollar?

A. Oh, yes, sir; he had a running account at that time.

Q. But I thought you just now said that he hadn't any money in your bank when you advanced him $2,500; didn't you say so?

A. I would not be able to say how much without balancing the account.

Q. You would not be able to say how much?

A. Yes, sir; the money I advanced him, the $2,500 first, and the subsequent money which I advanced him, amounting to between $15,000 and $16,000, hadn't anything to do, and this first money I advanced him, hadn't anything to do with this account with my firm.

Q. But didn't you just now say when you advanced him the $2,500 he had no money in your bank?

A. I did not intend to say so; I don't know how much he may have had.

Q. You do not know whether he had any at that time?

195 A. He was working in a speculative account there, and sometimes there would be a good deal of margin to his account, and sometimes there would not be so much.

Q. In the speculative account, at times he would have none, very often, in that speculative account?

A. Yes, sir; that is the way he came to owe me so much in the end.

Q. At the time you advanced the $2,500, you do not know whether he had any money in the bank at all, do you?

A. I cannot say positively.

Q. Well, then, without knowing, you cannot say positively whether he had any?

A. No, sir.

Q. Without any security you had given him $2,500 to start a lottery business in North Carolina; is that it?

A. The money that I gave to Mr. Harrison, which was the first money I gave him, was in the presence of Sir Edward McKenzie, who was going to North Carolina to organize this lottery business; he was an English baronet.

Q. What did he have; the baronet?

A. I handed the money to Mr. Harrison; I assumed this as a loan to him to start this business; I was to furnish the money.

Q. That is right; you loaned it, then, on Harrison's credit to start a lottery in North Carolina?

A. That is it.

Q. Without any security?

A. I had no security.

Q. Now, what is the next money you loaned him?

A. If I had my memoranda here I could tell you exactly.

Q. You said a short time ago that you accepted a draft for $2,500?

A. Yes, sir.

Q. That was for the same lottery?

A. Yes, sir; the same thing.

Q. Without any further security?

A. None.

Q. That was still in 1880, was it?

A. About 1880.

Q. Well, what is the next money you loaned him, that would be $5,00-?

A. Then I loaned him another $2,500.

Q. When did you lend him that?

A. I don't know whether that was one, two or six months after that.

196 Q. After the first one?

A. After the first two of $2,500.

Q. The first was 1880, and the next, you think, was in 1880?

A. Yes, sir; in 1880.

Q. And then there was one, say, about six months after the second; is that right?

A. To the best of my recollection, it is.

Q. How did you pay him that $2,500, that third $2,500?

A. I think by simply crediting his account with it. I think my cashier credited his account with it.

Q. Credited his account?

A. Yes, sir.

Q. You mean charged his account?

A. Yes, sir; simply transferred it on the books to his credit.

Q. You just put $2,500 to his credit?

A. Yes, sir.

Q. What was *not* that $2,500 advanced -or?

A. It happened to be about that time to make his account good.

Q. To make his account good?

A. Yes, sir.

Q. Well, how did your lending him $2,500, putting $2,500 to his credit, make his account good with you?

A. Well, it kept his account from showing a debit balance.

Q. Well, let us see; he first owed you then $2,500, and in order to make it look square on your book, you credit him with $2,500; is that right?

A. Yes, sir.

Q. What was done, if anything, between you and him?

A. Well, in that business that I was in there, I was a member of the New York stock exchange, and he was dealing in securities that were fluctuating repeatedly, sometimes every few minutes, and sometimes he would have quite a good deal of money and that money was credited to him, to keep his account good.

Q. Well, he owed you $2,500, and——

A. As a result of this business, he owed me $16,000.

Q. Never mind; we will come to that presently; we are taking one thing at a time. First he owed you $2,500, and in order t make his credit good you credit him with $2,500. What did you do that for?

A. Transferred $2,500 to his account on our books; I did it with a great many other sums.

Mr. WHYTE: He said that the firm of Dimmock & Company; you were in the firm?

197 A. Yes, sir.

Mr. CARTER: It was the firm that advanced him these moneys?

A. His account, from the stock going down there, his account would be overdrawn.

Q. And the firm of Dimmock & Co. credited him with $2,500?

A. On the personal arrangement with him to make his account good, I transferred the money to his account to make it good for him, which I suppose constituted the loan.

Q. You loaned that $2,500?

A. I did.

Q. To make his account good with Dimmock & Company?

A. I did; yes, sir.
Q. But he did not have any security for it?
A. No, sir.
Q. And he also owed you another $5,000 on the North Carolina lotteries?
A. Yes, sir.
Q. Well, what is the next loan?
A. These are the largest sums, I think.
Q. Let us try to see if we cannot get some smaller ones. Now, you go from $7,500, you know, up to $16,000, and I want to know how you get that.
A. Oh, I have got every item paid in his account.
Q. But you haven't them here, you know.
A. No, sir; I didn't suppose you would want it.
Q. We have only you here today, Mr. Whiton; we haven't the account. Now give me some more items.
A. I cannot say, sir.
Q. You cannot tell the court how the difference between $7,500 and $16,000 is made up?
A. Probably at this time there were several hundred thousand dollars that I never did get from my other customers.
Mr. POE: Then the interest for that time would not make quite an amount?
Q. I am not talking about the other customers; I am talking about Mr. Harrison now; on what account did you lend him the next money?
A. Simply on the running account.
Q. In what sums did you lend him?
A. I couldn't say; these larger sums are impressed on my memory.
Q. When was the last one you loaned him?
A. About that time.
Q. About what time?
198 A. About 1880 or 1881.
Q. It has been due, then, from 1880, without any security in the way that you have described, down to 1894; is that right?
A. That is right.

Redirect examination.

(Mr. WHYTE:)

Q. You say that this aggregation of nearly $16,000 arose from these larger items that you have described, and from additional sums, the amounts of which you cannot now recall?
A. No, sir. I remember on one occasion, it just happened to come to my memory, of just lending Mr. Harrison $500. I think I handed him a five-hundred-dollar bill.
Q. Do you remember on another occasion of lending him $1,700?
A. I may have; I don't remember; I cannot say what amount. I think I paid a bill of $2,500; I am not sure.

(Mr. POE:)

Q. For what, sir?

A. It was some stock; I think there was one other item of $2,500; I don't know whether I handed the money to Mr. Harrison to pay it or not, or whether it was paid at the office; I had two offices in New York then, one in the railway-supply business and the other in the banking business in Wall street.

Mr. WHYTE: He cannot remember, if your honor please, how the items are made up, but he says there was a balance of $15,000 or $16,000 due him, and he gives the main items, the large items, and he hasn't his account here and I do not see why for the purpose of refreshing his recollection I cannot ask him to look at the bills I produce to show how the account in a measure was augmented. He can recall the fact whether he paid this bill of $2,125.

A. I had no security; I had the transfer of an interest in this business.

(Mr. WHYTE:)

Q. Look at that bill and state if you recollect having paid that; that is a part of the charge.

A. (After inspection.) This is the bill that I had in my mind; it seems it is $2,125. I had an idea it was $2,500.

(Mr. CARTER:)

Q. This is one of the first two items?

A. No, sir; on the contrary it is for the making of some stock.

Q. Making some what?

A. Making some stock; it is a lithographer's bill.

Q. For the North Carolina Beneficial Association?

A. Yes, sir.

Q. That is the same lottery?

A. The same thing; yes, sir.

Q. In 1881?

A. Yes, sir.

199 (Mr. WHYTE:)

Q. Was that lottery chartered by the State of North Carolina?

A. Yes, sir; thirty years, I believe, was the time of the charter.

Q. You cannot recall the other items; but, as you have stated before, the amount aggregated about $16,000?

A. Yes, sir.

Recross-examination.

(Mr. CARTER:)

Q. What are you doing now?

A. I have an office at 124 West 23rd street, New York.

Q. What are you doing?

A. I am secretary of the Rockland Cemetery Improvement Company, a concern with a capital of three million dollars.

Q. That is all you do now?
A. No, sir; I have large mining interests in southwestern Colorado, also some at Lake George.
Q. How long have you been in Baltimore at this time?
A. I came over here last night.

(Mr. WHYTE:)

Q. You came from Piermont?
A. Yes, sir.
Q. Were you sent for?
A. Yes, sir.

The evidence having been closed on both sides, the plaintiff offered the five following prayers:

Plaintiff's First Prayer.

The plaintiff, by his counsel, prays the court to rule that if it shall find from the evidence that the contract between the plaintiff and defendant, dated December 8th, 1894, and read in evidence, was signed and sealed by the plaintiff and defendant, and left in the possession of the defendant as a complete and operative instrument according to its terms, and that in accordance with said contract, shortly after the execution thereof, the plaintiff executed to the defendant the assignment read in evidence of his right to the invention therein mentioned, on which application for a patent was then pending, and that defendant afterwards employed and paid patent attorneys to procure for him the patent from the Government of the United States, and from the governments of other countries; and if the court shall further find, that the said application for a patent was allowed by the Government of the United States, and subsequently that letters patent for said invention were granted, bearing date January 22nd, 1895, as read in evidence, and that the plaintiff, at the time of the execution of said agreement with the *plaintiff*, had no knowledge or notice of the agreement between Henry Campbell and the Campbell Barrel Company, offered in evidence, then the plaintiff is entitled to recover.

("*And that there is no evidence that the plaintiff had any knowledge or notice of said agreement between said Campbell and said Campbell Barrel Company.*") (Rejected as offered, but granted as modified by omitting the words in italics.)

200 *Plaintiff's Second Prayer.*

The plaintiff, by his counsel, prays the court to rule that the defendant has offered no evidence legally sufficient to show that the contract set out in the declaration was procured by the plaintiff from the defendant by fraud, or by undue influence. (Conceded.)

Plaintiff's Third Prayer.

The plaintiff, by his counsel, prays the court to rule that the defendant has offered no evidence legally sufficient to show that there was no consideration for the agreement set out in the declaration. (Rejected.)

Plaintiff's Fourth Prayer.

The plaintiff prays the court to rule that if the court shall find that on the 11th day of September, 1894, Henry Campbell made to the plaintiff the assignment of one-half interest in his then pending application to the United States Patent Office for a patent for the invention in said assignment mentioned, and subsequently, on or about the 26th of November, 1894, made to the plaintiff a further assignment of all his interest in his said pending application and to the patent thereon, whenever the same should thereafter be granted; then, by virtue of said two assignments, the plaintiff acquired an inchoate title to said invention and to the patent thereon, when the same should thereafter be granted, which title it was competent for the plaintiff to sell, assign and dispose of; and if the court shall further find that on or about the 10th day of December, 1894, the plaintiff executed to the defendant the assignment read in the evidence and dated the 8th day of December, 1894, for the consideration therein mentioned, and that subsequently, on or about the 22nd day of January, 1895, a patent was issued by the United States in the name of said Henry Campbell, for the invention described in said several assignments from said Campbell to the plaintiff and from the plaintiff to the defendant, then the defendant, by virtue of said letters patent, acquired a valid title to and became the owner of said patent, and said assignment from the plaintiff to the defendant, bearing date the 8th day of December, 1894, was supported by a good and sufficient consideration, and the plaintiff is entitled to recover upon the contracts set out in the declaration, provided the court, sitting as a jury, shall find that the said contract was signed and sealed by the plaintiff to the defendant, and was designed by them to be an operative instrument according to its terms; and provided further that at that time of the execution of said contract, the plaintiff had no knowledge or notice of the agreement between Henry Campbell and the Campbell Barrel Company, bearing date the — day of January, 1892, and offered in evidence by the defendant, and that there is no evidence legally sufficient to show that the plaintiff had any such knowledge or notice of said agreement. (Rejected.)

Fifth Prayer.

That the agreement of January, 1892, between Henry Campbell and the Campbell Barrel Company, offered in evidence by the defendant, is no defence to this action, if the court shall find
201 that by the true construction of said agreement, the invention and device described in the contract set out in the declaration, is not embraced within said agreement. (Granted.)

And the defendant offered the following two prayers:

Defendant's First Prayer.

The defendant asks the court to rule as matter of law that upon the pleadings of the case the burden is upon the plaintiff to prove the delivery of the sealed instrument sued on, and if the court, sitting as a jury, finds that the paper sued on never was delivered, the verdict must be for the defendant. (Granted.)

Defendant's Second Prayer.

If the court, sitting as a jury, shall find that when the paper sued on was presented by the plaintiff to the defendant for the latter's signature, with the request that he would sign it, the defendant declined so to do, as the terms of such papers did not correspond with any agreement made or talked of between the plaintiff and defendant, and that thereupon it was agreed between them, that the papers in duplicate should be signed by the defendant, and both kept in his possession, and should not be of any force, and should belong to the defendant until he chose to put them in force, and that in pursuance of this agreement they were then signed by the defendant and always afterwards kept in his possession until produced at the trial of this cause, on notice, and that at no time after the signing of said papers did the defendant ever exercise his option of putting into force, but on the contrary, subsequently thereto, exercised his option by declining to recognize them as in force, then the verdict shall be for the defendant. (Granted.)

And the plaintiff also filed a special exception to the granting of the second prayer of the defendant, which is as follows:

HARRISON *vs.* MORTON. } Before the Hon. Judge Dobler.

The plaintiff specially excepts to the defendant's 2nd prayer, because there is no evidence legally competent and sufficient to show that there was an agreement that the contract sued on should be signed by the defendant, and both kept in his possession, and should not be of any force and should belong to the defendant until he chose to put them in force. The plaintiff further excepts to said 2nd paayer, because there is no competent evidence legally sufficient to show that at no time after the signing of said contract did the defendant exercise his option of putting it in force; but, on the contrary, subsequently thereto, exercised his option by declining to recognize it as in force. (Exception overruled.)

And the court rejected all the prayers of the plaintiff, and refused to grant the same therein prayed, and in lieu of the plaintiff's first prayer submitted the following instructions: The first prayer
202 as offered and changed by the court has heretofore been inserted in this record.

And in lieu of the plaintiff's fourth prayer, submitted the following instructions:

If the court shall find from the evidence that the plaintiff acquired the assignment- from Henry Campbell, dated the 11th day of September, 1894, and Nov. 26, 1894, offered in evidence, upon the consideration mentioned by the said Henry Campbell in his testimony, and without knowledge or notice of the agreement between said Henry Campbell and the Campbell Barrell Company, dated the — day of January, 1892, offered in evidence by the defendant; and if — shall further find that the contract set forth in the declaration in this cause was designed by the plaintiff and defendant to be an operative instrument according to its terms, and that the plaintiff executed to the defendant, on or about the 10th day of December, 1894, the assignment read in evidence, dated the 8th day of December, 1894, for the consideration therein mentioned, and that subsequently a patent was issued by the United States in the name of said Henry Campbell, for the invention described in said several assignment-, from said Campbell to the plaintiff, and from the plaintiff to the defendant, then the defendant, by virtue of said letters patent, acquired a valid title to and became the owner of said patent, and the plaintiff is entitled to recover in this action, there being no evidence to show that the said Campbell Barrel Company has claimed any interest in said patent. (Granted by the court.)

And the court granted the first and second prayers of the defendant, and overruled the plaintiff's special exception to the defendant's second prayer, and the plaintiff excepted to the granting of the first and second prayers of the defendant, and to the overruling of the plaintiff's special exception to the defendant's second prayer, and to the refusal of the court to grant the plaintiff's first, second, third and fourth prayers, and to the court's instruction given in lieu of the plaintiff's 1st prayer, and to the instruction given in lieu of the plaintiff's fourth prayer, and prays the court to sign and seal this its seventh bill of exceptions, which is accordingly done this 18th day of February, 1896.

JOHN J. DOBLER. [SEAL.]

Test: HENRY A. SCHULTZ, *Clerk.*

STATE OF MARYLAND, *City of Baltimore,* } *sct:*

I, Henry A. Schultz, clerk of the Baltimore City court, do hereby certify, that the aforesaid is a full, true and entire transcript taken from the record and proceedings of the said court in the thereinentitled cause.

(Seal's place.) In testimony whereof, I hereunto set my hand and affix the seal of the Baltimore City court, aforesaid, on this fourteenth day of March, eighteen hundred and ninety-six.

HENRY A. SCHULTZ, *Clerk.*

203 *Opinion.*

Filed June 17th, 1896.

On the eighth of December, 1894, Walter H. Harrison, the appellant, claims to have entered into an agreement under seal with the appellee, Franklin J. Morton.

By the terms of this agreement Harrison was to assign to Morton a certain invention for a machine to make barrels and kegs, for which application had been made to the Patent Office by Henry Campbell, the inventor. Harrison alleged himself to be the owner of this invention by virtue of an assignment from the inventor. By the terms of this alleged agreement Morton was to pay Harrison the sum of one hundred thousand dollars in consideration of the sale and conveyance to him of all Harrison's rights under said assign-
ment from the inventor within ten days after the issuing by
204 the United States of letters patent for the invention, and also as part of the consideration for said sale and conveyance Morton was to transfer to Harrison a certain number of full-paid and non-assessable shares of a corporation to be formed by the former, who was also to pay Harrison a sum equal to forty per cent. of the gross royalties upon sales of the patented machines under patents issued by the Government. On the 8th of February, 1895, Harrison sued Morton on covenant on the agreement of the 8 December, 1894, alleging in his *narr.* ownership of the patent under assignment from the inventor, the sale and conveyance thereof to Morton and the consideration therefor as above mentioned, the assignment to Morton, and the issue and delivery to him of letters patent and acceptance thereof by him and his failure to comply with said agreement. Harrison claimed as damages $300,000.

205 To this *narr.* Morton pleaded, first, *non est factum;* second, *fraud*, and, third, undue influence in procuring his signature to the agreement sued on. He also pleaded three additional pleas on equitable grounds: First, that there was no consideration for the alleged contract; second, that at the date of the alleged contract Harrison was not the owner of and had no valid title to said invention and machine; third, that at the time of said alleged assignment to Morton of the patent Harrison, the plaintiff, was not the owner and had no valid title to the same. The defendant also pled a plea of set-off and a bill of particulars thereof, amounting to over $31,000. The case was tried before the court without a jury, and resulted in a verdict for defendant for $35,091.65.

A number of questions, which we do not feel called on to
206 consider here, were discussed at the hearing by counsel for both parties. The character and standing of the parties in the city of Baltimore and the career of one of them, as illustrated by former litigation in the courts of this State, are not necessarily or, indeed, at all involved in this controversy. We are concerned with the exceptions which we find in the record, and shall proceed

to discuss them with as much brevity as their proper consideration will permit.

The third and fifth exceptions have been abandoned.

The plaintiff had offered evidence tending to prove that the contract sued on was valid, binding, and operative, and that in pursuance thereof the defendant had paid certain sums of money and had done certain acts. When the defendant was examined as a witness he was asked whether before the contract was executed he
207 had any conversation with the plaintiff; and, if so, what he had agreed upon and on what terms in connection with that patent device. The objection of the plaintiff to the asking of this question was overruled, and this constitutes the first exception. The objection appears to be twofold—first, that no parol evidence of prior agreements are admissible to vary or alter the written contract sued on, and, second, that the proposed question, so far as it was asked for the purpose of eliciting testimony upon the issue of fraud and undue influence in procuring the signature of the defendant to said contract, was irrelevant because there was no such issue in the case, the court below having found and so declared by plaintiff's second prayer, which was conceded by the defendant, that there was no legally sufficient evidence in the cause to show such fraud.

In regard to the first ground of the objection, all difficulty
208 would seem to disappear when we remember that the issue is not as to the construction of the contract or what the contract is, but whether there is any contract in existence. The defendant pleaded *non est factum*, and evidence which tended to show that the money paid and acts done by the defendant were paid and performed not in pursuance of the alleged contract, but in execution of another contract, and at the same time to show that altho' the alleged contract was signed by both parties it had never become operative because never delivered, would clearly be admissible. The rule which excludes parole testimony when offered to vary or contradict a written instrument can, of course, have no application here, for the testimony objected to was offered not to vary or contradict, but to prove it had no existence. Guardhouse *v.* Blackburn, L. R., 1 P. & D., 115. In the case of Pym *v.* Campbell,
209 Erle, J., said: "The distinction in point of law is that evidence to vary the terms of an agreement in writing is not admissible, but evidence to show that there is no such agreement at all is admissible."

To the same effect Ware *vs.* Allen, 128 U. S., 596, and in regard to the second ground of objection it may be said that it does not appear that the testimony objected to was offered to show fraud, but to establish the defendant's contention that the contract, although signed by both parties, was not to be valid and binding until the defendant should so determine, and that in the meantime he was to hold it "in trust," and in point of fact he appears to have held possession of the paper until it was produced in the court below upon the demand of the plaintiff.

What we have said in regard to the first exception applies also to the fourth.

The second exception was taken to the refusal to rule out
210 a question put to the defendant in regard to an arrangement by which he agreed to and did advance $2,500 to enable the plaintiff to exploit a North Carolina gold mine and the representations then made by the plaintiff to the defendant in regard to money the plaintiff owed the defendant. The testimony in regard to the gold mine was offered for the purpose of explaining the circumstances under which the defendant, according to his testimony, determined, with the assent of the plaintiff, that the contract, the cause of action here, should never be considered operative. It was by a speculation in this gold mine with the money borrowed from the defendant that the plaintiff promised to pay the defendant some $25,000 then due, and when, instead of paying this or any sum, the plaintiff drew a draft on the defendant for $1,175, the defendant thereupon determined to exercise his option of declaring the contract inoperative. The object of the plaintiff was to
211 show the contract was valid and he had offered much evidence in support of his contention, and therefore the defendant had a right, as we have already said, not only to show the contrary if he could do so, but also the circumstances under which his alleged right to declare the contract void was exercised. As we have said, the testimony admitted certainly tended to that end.

The sixth exception involves the admissibility in evidence of the minutes of the Campbell Barrel Company to show that the inventor, long previous to the contract of Dec. 8, '94, and before the date of his assignment to the plaintiff Harrison, had agreed to sell and transfer, and that the said company had agreed to purchase, the invention and patent rights which are alleged to have been sold and assigned by the plaintiff to the defendant, and that therefore, the plaintiff having assigned all his right and title to said
212 invention to said barrel company, he had nothing to assign the defendant. It was shown that the original paper by which this alleged assignment was made by the defendant to the barrel company, a copy of which is contained in the minutes of the latter, was searched for among the papers of said company and in other places where it was believed it might be found, but it was not discovered. We think, under the circumstances, a proper foundation was laid for the introduction of the copy as secondary evidence; but, independent of this view, it would seem that the minutes are admissible to show, and they were offered for that purpose, that the plaintiff, having sold his patent to the barrel company, could not again sell it to the defendant. The minutes are the best evidence to show that the stockholders agreed to and ratified the proposition of the inventor to subscribe for $90,000 of the company's stock and pay for his subscription by an assign-
213 ment of his said patent.

Beach on Private Corporations, sec. 295.

The effect of this evidence will be considered under the seventh and last exception, which relates to the rulings upon the prayers, and which we will now consider.

We think there can be no doubt that the defendant's two prayers were properly granted. By the first the court declared as matter of law that upon the pleadings the burden was upon the plaintiff to prove the delivery of the sealed instrument sued on, and that if the court sitting as a jury should find that said paper never was delivered the verdict must be for the defendant. The second prayer recites the evidence more at length, but asserts the same proposition of law, which appears to be well settled in this State. Edelen *vs.* Saunders, 8 Md., 129. We discover no inconsistency between the two prayers. The plaintiff specially excepted to the second
214 on the ground that there was no evidence in the cause legally sufficient to prove the facts therein set forth. It is clear, however, that the testimony of the witnesses Morton and Coale support the facts set forth in the prayer, and we have already held it to be competent and admissible under the issue made by the plea of *non est factum.*

We will now consider the prayers of the plaintiff. He offered five, the second having been conceded and the fifth granted.

The controlling proposition in this part of the case is that contended for by the plaintiff in his first, third, and fourth prayers, namely, that there is no legally sufficient evidence in the case to show that he had any knowledge or notice of the agreement between the inventor Campbell and the Campbell Barrel Company

The correctness of this contention of the plaintiff depends
215 first upon the legal effect of the assignments from Campbell to the plaintiff, and, secondly, upon the effect of the contract of Campbell with the Campbell Barrel Company—that is to say, whether said *company* thereby assigned to said company an equitable title to his invention prior in date to the title he claims to have assigned to the defendant, which latter title the plaintiff claims to be an absolute legal title, and the defendant's contention, on the contrary, is that it is a mere equitable title, subsequent in date and therefore inferior to the title of the barrel Co. The plaintiff claims title through two assignments from Campbell, each being for one-half interest in a certain application filed in the Patent Office of the United States, at Washington, D. C., which application is for letters patent covering the invention of a machine for forming and making barrels and kegs.

It will be found upon an examination of these instruments
216 that they do not contain a request to the Commissioner of Patents to issue letters patent to the plaintiff. Notwithstanding they were recorded in the Patent Office, letters patent were issued in the name of Henry Campbell, the inventor, and the defendant contends that the legal effect of such an assignment, in which the inventor fails to embody a request to the Commissioner of Patents to issue letters to the assignee, is to convey to such assignee only an equitable title. It is conceded that by one of the rules of the Patent Office the Commissioner will not and cannot issue the letters patent to an assignee, unless specially requested so to do by the terms of the assignment. One of the witnesses refers to this rule in his testimony. The patent having been issued to Campbell in-

stead of to the defendant, the witness thus explains: "I ascertained that the probable reason why it (the patent) had not been issued to Mr. Morton was this: the original assignment from Mr. Campbell to Mr. Harrison did not contain the request which the rules of the Patent Office required in order that the patent should be issued in the name of the assignee." *Rule 26, Rules of Practice in U. S. Patent Office, page 9.* Revised April 1, 1892.

Remembering that the assignments from Campbell to the plaintiff, which we are now considering, were made before the issue of letters patent, let us ascertain what such a conveyance carries. The assignment of a right to obtain letters patent is, "in effect, a contract to assign the patent when issued, and as such is enforceable in equity."

But "such an instrument creates no legal title to the patent in the assignee." 1 Robinson on Patents, sec. 411–414.

The same author, sec. 764, thus speaks of an assignment like the one we are considering, which was made before the issue of letters. "An assignment of a completed invention may be made either before or after the issue of the patent. An inventor has, by virtue of his inventive act, not merely the ownership of his invention, but an inchoate right to the monopoly, which is to become vested on *his application for and receipt of letters patent.* This ownership of the invention and inchoate right to perfect his title to the monopoly by obtaining letters patent is made assignable by law equally with the patented invention; and an assignment covering these rights and properly recorded secures to the assignee both the invention and monopoly immediately on the *issue of the patent.* To authorize an issue of the patent directly to the assignee, however, the instrument of assignment *must contain* a written request to the Commissioner of Patents that the letters patent may be granted to the assignee." * * *

"Such a conveyance transfers to the assignee the legal title as well as the equitable to the patented invention." * * *

"An instrument purporting to be an assignment, but not containing the request, * * * does not convey the legal title to the patented invention."

One of the earliest cases in which this rule, thus explained by the learned author, was adopted is that of Gaylor *v.* Wilder, 10 Howard, 480, in which Chief Justice Taney, delivering the opinion of the Supreme Court, said: "The discoverer of a new and useful improvement is vested by law with an inchoate right to its exclusive use, which he may perfect and make absolute by proceeding in the manner which the law requires." Again he says: "It appears by the language of the assignment that it was intended to operate upon the perfect legal title which he then had the lawful right to obtain, as well as upon the imperfect and inchoate interest which he actually possessed. *The assignment requests that the patent may issue to the assignee.*"

As we have seen, it is required when letters are to be issued to an assignee the assignment must contain that request (rule 26, p. 9), but it was suggested that such a rule is a mere regu-

lation for the convenience of the Patent Office and was not binding; but the rules established by the Commissioner of Patents "are, until abrogated, as binding as the law itself, not only upon him and his inferior officers, but upon persons doing business with his department, provided such rules are not in contravention of any statute." U. S. Rev. Stat. 1874, sec. 483; 1 Robinson on Patents, pg. 84 & note.

It follows from what C. J. Taney says in *Gaylor v. Wilder, supra*, that prior to the issue of letters patent to the inventor he has an imperfect, inchoate right to its exclusive use, which he may perfect and make absolute by taking the steps required by law, and especially by having letters patent issued to him. Or he
221 may by an assignment of this inchoate right, coupled with a request to issue letters to his assignee in compliance with rule 26 of the Patent Office, transfer to such assignee a legal title to such invention. The legal title passes to the assignee under such an assignment, because he has under it, as the inventor had by law, the right to secure letters in his own name; but the only way in which such letters, which are the evidence of a perfect legal title, can be secured to the assignee is by the request of the inventor first and of his assignees, as the case may be, expressed in the assignment. It appears by the evidence that the letters for the invention and patent which the plaintiff claims to have sold and assigned to the defendant for $100,000 never have been in the name of either. Letters patent were issued to Henry Campbell, the inventor, although every effort was made by the plaintiff to have them issued to
222 the defendant. In the case of Wright *vs.* Randle, 8 Fed. Rep., 591, Blatchford, J., cites *Gaylor v. Wilder, supra*, to show that an assignment with request to issue letters to assignee passes the legal title, but in referring to another assignment before the court he says, in the same case: "The instrument provided that Randle (the inventor) should apply for new patents for the past improvements, but it did not, while assigning the improvements, provide that the new patents should be issued to Randle and the assignee jointly. Out of this all the trouble has arisen." Further on in the opinion the following language shows what the trouble was: "The omission of a request by Randle to the Commissioner to issue the patent to the assignee jointly with himself * * * enabled Randle to make a second transfer of the invention and to secure the issuing of the patent as it was issued"—that is, to himself and two others.

223 The general rule appears to be that an assignment without the request conveys only an equitable title. See also *Davis Wheel Company vs. Davis Wagon Co., 22 Blatchford, 221; Hendric vs. Sales, 98 U. S., 551; U. S. Stamping Co. vs. Jewett, 7 Fed. Rep., 877; Littlefield vs. Perry, 21 Wall., 205; Newell vs. West, 13 Blatchford, 114; Nail Co. vs. Borning, 14 How., 193.*

It would seem, therefore, that the rule so broadly laid down by the learned author (Robinson on Patents), if not adopted in clear and distinct terms, has been often recognized and never repudiated

by the courts having general jurisdiction of questions arising under the patent laws of the United States. Applying the rule we have been considering to the assignments from Campbell to the plaintiff, it will follow that the plaintiff took from Campbell and could sell and assign to the defendant only an equitable title, because
224 those assignments were not drawn as required by law to carry the legal title. What, then, is the result? In the case of Chew *vs.* Barnett, 11 S. & R., C. J. Gibson said an equitable title "is in truth nothing more than a title to go into chancery to have the legal estate conveyed, and therefore every purchaser of a mere equity takes subject to every clog that may lie on it *whether he has notice or not.*"

And to the same effect are Basset *vs.* Nosworthy, notes to 2 White & Tudor Ldg. C. in Equity, 67; Sharas *vs.* Craig, 7 Cranch, 34–48; Philips *v.* Philips, 4 De Gex, F. & J., 208–215. If, therefore, the Campbell Barrel Company acquired an equitable title to the patent, as it undoubtedly did, under its contract with the inventor, before the assignment of the equity to the defendant, the latter took subject to the equitable title in the said company, and the first,
225 third, and fourth prayers of the plaintiff were properly refused, for they all asked the court to say that there was no legally sufficient evidence to show that the plaintiff had knowledge or notice of the agreement between the plaintiff and the barrel company; but, as we have seen, knowledge and notice will be imputed to him, as C. J. Gibson said in *Chew vs. Barnett, supra*, "whether he had notice or not," holding as he did only an equitable title.

By the fifth prayer of the plaintiff, which was granted, from which ruling there has been no appeal, the court below held that the agreement of Campbell with the barrel Co. was no defence to this action if the court should find that by the true construction of that agreement the invention and device described in the contract sued on is not embraced within said agreement. Inasmuch, however, as there was a verdict for the defendant, it follows that
226 the court below must have found that the invention and device described in the declaration was embraced in the Campbell agreement, and that therefore the latter was a good defence to this action. It will appear from an examination of the whole case that the only other alternative upon which the court below could have found a verdict for the defendant was that the contract sued on never was in force, so that in neither event could there have been a verdict for the plaintiff.

Finding no error in the rulings of the learned judge below, the judgment will be affirmed.

Judgment affirmed.

227 And on the same day and year, to wit, the 17th day of June, 1896, the following judgment was entered by direction of the said court of appeals, to wit:

Judgment affirmed with costs by the court of appeals of Maryland on the 17th day of June, 1896, for the sum of $39,091.65, with

interest thereon from the 13th day of December, 1894, until paid, and costs *and costs.*

And afterwards, to wit, on the 22nd day of September, 1896, there was filed a certain bond in the words and figures following, to wit:

228 (*Bond. Filed September* 22, 1896.)

In the Court of Appeals of Maryland.

WALTER H. HARRISON *vs.* FRANKLIN J. MORTON. } Writ of Error to the Supreme Court of the United States.

Know all men by these presents that we, Walter H. Harrison, of Baltimore city, in the State of Maryland, as principal, and the Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the defendant, Franklin J. Morton, of Baltimore city, in the State of Maryland, in the full and just sum of two hundred and fifty dollars, to be paid to the said defendant, Franklin J. Morton, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, *we*, the said Walter H. Harrison, binds himself, his heirs, executors, and adminis-
229 trators, and the said Fidelity and Deposit Company of Maryland binds itself and its successors, jointly and severally, by these presents.

Sealed with the seals of the said Walter H. Harrison and signed by the president and sealed with the seal of the said Fidelity and Deposit Company of Maryland and dated this seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at the court of appeals of Maryland, in a suit depending in said court between Walter H. Harrison, plaintiff, and Franklin J. Morton, defendant, a judgment was rendered against the said Walter H. Harrison, and the said Walter H. Harrison having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Franklin J. Morton, citing and admonishing him to be and appear at a session of the
230 Supreme Court of the United States within thirty days from the 17th, seventeenth, day of September, eighteen hundred and ninety-six, at the city of Washington, in the District of Columbia:

Now, the condition of the above obligation is such that if the said Walter H. Harrison shall prosecute the said writ of error to effect

and answer all costs if he fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

WALTER H. HARRISON. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
Per JOS. R. STONEBRAKER, *Vice-President.*

{ Seal of the Fidelity and Deposit Company of Maryland, Incorporated 1890. }

Attest: H. E. BOSLER, *Sec'y.*

Sealed and delivered in the presence of—

WM. P. HALL,
As to Harrison.

Approved by—

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

231 I, J. Frank Ford, clerk of the court of appeals of Maryland, do hereby certify that the foregoing is a true transcript of the record and proceedings in the case of Walter H. Harrison *vs.* Franklin J. Morton as the same remains on file in the clerk's office of the said court of appeals.

And I do further certify that the said court of appeals of Maryland is the highest court of law or equity in said State in which a decision can be had in said case.

Seal Court of Appeals, Maryland. In testimony whereof I have hereunto subscribed my name as clerk and affixed the seal of the said court of appeals of Maryland on this 6th day of October, A. D. 1896.

J. FRANK FORD,
Clerk of the Court of Appeals of Maryland.

Endorsed on cover: Case No. 16,403. Maryland court of appeals. Term No., 245. Walter H. Harrison, plaintiff in error, *vs.* Franklin J. Morton. Filed October 14, 1896.

No. 245.
Brief of White, Phillips & McKenney
for P. E.
Filed April 25, 1898

APR 25 1898
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 245.

WALTER H. HARRISON, Plaintiff in Error,

vs.

FRANKLIN J. MORTON.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF FOR PLAINTIFF IN ERROR.

WM. PINKNEY WHYTE,
SAMUEL F. PHILLIPS,
FREDERICK D. MCKENNEY,
For Plaintiff in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4-25-'98

IN THE

Supreme Court of the United States

OCTOBER TERM, 1897.

No. 245.

WALTER H. HARRISON, PLAINTIFF IN ERROR,

vs.

FRANKLIN J. MORTON.

BRIEF FOR PLAINTIFF IN ERROR.

This suit was brought by the plaintiff in error, Harrison, against the defendant in error on the 8th of February, 1895, in the Baltimore City Court, to recover the sum of $300,000 damages for the breach of a contract under seal for the sale of certain patent rights.

Under that contract the plaintiff in error sold, and the defendant in error bought and agreed to pay for, a certain machine, method, and device for making barrels and kegs, and all his right, title, and interest in certain pending letters patent therefor, when issued, at and for the price of three hundred thousand dollars, whereof one hundred thousand dollars were to be paid in cash within ten days after the issuing of letters patent, and the remaining two hundred

thousand dollars were to be paid in the full-paid, non-assessable shares of a corporation, to be incorporated and organized by the defendant in error, Morton, under the laws of Maryland, with a capital stock of five hundred thousand dollars. (R., p. 7.)

The pleas were:

First. *Non est factum.*

Second. That the signature of the defendant in error to the alleged agreement was procured by the fraud of the plaintiff in error.

Third. That the signature of the defendant in error was procured by the undue influence of the plaintiff in error.

And also three supplemental pleas on equitable grounds:

1st. That there was no consideration for the alleged agreement.

2d. That at the date of the alleged agreement Harrison was not the owner of and had no valid title to the machine, method, and device mentioned in the declaration.

3d. That at the time of the alleged assignment of the patent Harrison was not the owner of and had not a valid title to the said patent.

The defendant also filed a plea of set-off, and upon demand for a bill of particulars of such set-off filed a bill of particulars, amounting to thirty-one thousand seven hundred and ninety-one dollars and fifty-two cents ($31,791.52).

Replications were duly filed and issues joined on all of them. (R., pp. 12, 13.)

The case was tried before the judge without a jury. (R., p. 13.)

The trial judge rendered a general verdict for the defendant, on which judgment was entered for $35,091.65, with interest and costs. (R., p. 13.)

An appeal having been taken to the court of appeals of Maryland by the plaintiff Harrison, the judgment of the court below was affirmed by the said court of appeals on the 17th of June, 1896, for $39,091.65, with interest from the 13th of December, 1894, until paid, and costs. (R., p. 183.)

On September 21, 1896, a writ of error to review this judgment was issued to the court of appeals of Maryland.

ASSIGNMENT OF ERRORS.

1. It was error to decide that under the laws of the United States the assignments from Henry Campbell to Walter H. Harrison, dated the 11th day of September, A. D. 1894, and the 26th day of November, 1894, respectively, purporting to convey to the said Harrison the "entire right, title, and interest in and to the application for patent—serial number, 522,266—and the patent right contained therein and covered thereby," operated to convey to the plaintiff Harrison merely the equitable title in and to said invention and the patent rights covered by said application.

2. It was error to decide that the said assignments were not drawn as the laws required, and hence did not convey the legal title to the invention in question.

3. It was error to admit in evidence the minutes of the Campbell Barrel Machine Company as tending to show that the said Company had acquired an equitable title to the in-

vention covered by the contract sued upon prior to the assignment thereof by Campbell to the plaintiff Harrison.

4. It was error to decide that notice of the equitable title to the said patented invention in the Campbell Barrel Machine Company was properly to be imputed to the said Harrison, because he himself held at most but an equitable title in and to said invention.

5. It was error to decide that the trial court found that the invention described in the declaration was embraced in the alleged agreement between Campbell and the Campbell Barrel Manufacturing Company, and that therefore such agreement was a good defense to this action.

6. Error in the admission of testimony tending to prove that the contract sued upon had not been delivered.

7. Error in the admission of testimony tending to prove representations alleged to have been made by the plaintiff Harrison to the defendant in connection with the exploiting of a certain gold mine in North Carolina, prior to the date of the contract sued upon.

8. Error in the admission of testimony tending to prove fraud or undue influence on the part of the plaintiff in procuring the signature of the defendant to the contract sued upon.

9. Error in rejecting plaintiff's first prayer as offered by him.

10. Error in rejecting plaintiff's fourth prayer as offered by him, and in granting in lieu thereof the substitute as prepared by the court.

11. Error in granting defendant's first prayer.

12. Error in granting defendant's second prayer.

ARGUMENT.

It will be observed from the record that upon a petition filed by the plaintiff in error for the production of the contract sued on in this case and alleged to have been in the defendant's possession, instead of producing it and setting up the defense afterwards attempted, he answered "that he does not hold in his possession or under his power any contract between the plaintiff and defendant such as is mentioned in the declaration dated 8th December, 1894, and, not having possession or control of it, cannot produce it." (R., p. 15.)

Subsequently at the trial, on notice to produce the same extract similarly described, the defendant in error produced it. (R., p. 16.)

The printed record does not show that the court signed and sealed the first, second, and third bills of exceptions, but a certificate from the clerk of the court below, which was filed with the clerk of the Court of Appeals, shows that this is a clerical error, and that in fact said first, second, and third bills of exceptions were duly signed and sealed by Judge Dobler.

1*st Exception* (R., p. 2).

The plaintiff in error offered evidence tending to show that the contract sued on was signed and sealed by the plaintiff in error and defendant in error, and was left in the possession of the latter as a complete and operative instrument according to its terms, and that in accordance with the contract and shortly after its execution the plaintiff executed to the defendant an assignment of his right to the invention therein mentioned, on which application for a patent was then pending, and that the defendant afterwards employed and paid patent attorneys to procure for him the patent from the

United States and from the governments of other countries, and that the application for a patent was allowed by the United States in December, 1894, and letters patent afterwards granted therefor, dated January 22, 1895.

The defendant in error offered testimony tending to show the circumstances under which the agreement sued on was signed, and then offered himself as a witness. After testifying as to the set-off pleaded by him, the following question was put to him, viz:

"Now, Mr. Morton, passing from that for the time being, so as not to detain the court, two papers—two duplicates of one paper—dated the 8th of December, 1894, have been offered in evidence, the general purport of which is an agreement on your part to purchase certain devices—patent devices—for $100,000, and these are dated December 8, 1894. Now, I want to ask you whether in the early part of 1894 you had had any conversation with Harrison and with Campbell with reference to that device—that patent. If so, what did you agree, and on what terms to it, in connection with that device and that patent device?"

The plaintiff in error objected to this question, but his objection was overruled, and the first exception is to the overruling of this objection.

The question was answered, and in order that the court can see what the defendant in error said in answer to this question, and how material to the plaintiff the error of the court below was in allowing the question to be put and answered, the answer is subjoined:

"Mr. Harrison told me that Mr. Campbell had a patent for making kegs; he came into my office and asked me to go up to his office and look at it; I went up there and saw him, and he was in my office afterwards, and we talked there about it being a desirable thing, and if it could be used in conjunction with the old company.

"He came into my office afterwards, and also Mr. Campbell was there, and they talked about it and about its being a desirable thing and the benefit that would come in tak-

ing hold of it, or something to that effect, and I told them I would not do anything at all until I got the money he owed me; I would not go into any agreement or have anything to do with him until I got my money that was owing. He also talked about how, if it was taken, how much benefit each one would get; that I would get a benefit, Mr. Harrison would get a benefit, and Mr. Campbell would get a benefit, and I told them there, the ones that made the talk. Mr. Harrison made the talk and I sat and listened. I did not make any agreement, no arrangement, or no understanding at all, and I told them I would not have anything to do with him until he paid me my money, and then he asked me if I would take it in trust, and I told him yes, *I would take it in trust.* He said there was a small amount of expenses in getting out the patents, &c. Well, I said I would pay that; *I would take it in trust for them* and pay that. He said Mr. Campbell had given it to him in trust and asked me if I would take it in trust. That was the way of that. He said there would be some small expenses of getting out the patents in Washington."

Record, 102.

The court will see that, while the exception to the testimony referred to was overruled by the court of appeals, it was on the ground that the evidence was admissible under the plea of *non est factum*, "which tended to show that the money paid and acts done by the defendant were paid and performed not in pursuance of the alleged contract, but in execution of another contract," namely, under a contract to take the patents, paying the expenses, and *holding them in trust* for the plaintiff; and yet, in that view, as it will be hereafter seen, the court of appeals undertook to destroy the validity of the patents, and to declare that the plaintiff had no title thereto. (R., pp. 178, 181.)

2*d Exception* (R., 104).

This exception was taken to the ruling of the court permitting the following question to be put to the appellee and answered by him:

"Mr. CARTER: Now, Mr. Morton, there has been offered in evidence by us this morning that arrangement by which you advanced $2,500.00 to enable Mr. Harrison to exploit this North Carolina gold mine. What representations, if any, did Mr. Harrison make to you about that gold mine in connection with the money he owed you on other occasions?"

This question was objected to by the plaintiff's counsel because the transaction to which it referred took place on the 1st of November, while the contract in suit was dated December 8, 1894, and because the question was leading and not bearing on any issue in the *case*.

These objections seem to be quite sufficient to show the error of the court in permitting the question, and the answers of the defendant to this question and to the three succeeding questions, which grew out of it, also make it quite clear that the ruling of the court was prejudicial as well as erroneous.

The third and fifth exceptions were abandoned by the plaintiff in error in the court of appeals. (R., pp. 115, 126.)

4th Exception (R., p. 122).

This exception was taken to the overruling of the court of the appellant's objection to the following question put to the appellee:

"Now, prior to the 8th of December, what had been the only talk that you had had with Harrison or Campbell, or either of them, with reference to this device? What had you been asked to do by them, and what had you said that you would do? Now, first, what had you been asked to do?"

The testimony proposed to be elicited by this question could only be admissible in support of the issue of fraud or undue influence in the procurement of the signature of the defendant in error to the agreement sued on, and conse-

quently, inasmuch as no testimony of fraud or undue influence was offered, this question was improperly allowed to be answered, and as the answer was manifestly prejudicial, the ruling of the court constitutes sufficient ground for reversal.

The allegations of fraud and undue influence were abandoned by the defendant in error.

6th Exception (R., p. 163).

A brief reference to the pleadings and to some of the testimony will be necessary, in order to give a clear understanding of the question presented by this exception.

In his second and third supplemental pleas on equitable grounds the defendant averred that the plaintiff was not the owner of and had no valid title to the patented machine in question, nor to the patent issued therefor.

At the trial it was proved that on the 11th day of September, 1894, Henry Campbell made to the plaintiff an assignment of a one-half interest in his then pending application to the United States Patent Office for a patent for the invention mentioned in said assignment, and that afterwards, on or about the 26th of November, 1894, he made to the plaintiff a further assignment of all his interest in his said pending application and in and to the patent thereon, whenever the same should thereafter be granted.

On the 8th day of December, 1894, the agreement sued on was executed, and on the 10th of December, 1894, the plaintiff executed to the defendant and the defendant accepted an assignment, dated the 8th day of December, 1894, of all the plaintiff's interest in said machine and patent. The patent was allowed by the United States Patent Office in December, 1894, and on the 22d day of January, 1895, a patent was issued by the United States *in the name of said Henry Campbell* for the invention described in the two

assignments from said Campbell to the plaintiff and from plaintiff to the defendant.

The defendant, for the purpose of sustaining the issue joined on the said second and third supplemental pleas on equitable grounds, proposed to prove that in January, 1892, said Henry Campbell, for the alleged consideration of $90,000 in capital stock of the "Campbell Barrel Machine Company of Baltimore City," offered to sell certain inventions mentioned in his written proposition to that company for barrel and keg machines; that his proposition was accepted by said Campbell Barrel Machine Company, and that the machine sold by him on September 11, 1894, and November 26, 1894, and the letters patent for which he had applied, and which were pending at the time of said sale to the plaintiff, were covered by the said sale made by him in January, 1892, to the said Campbell Barrel Machine Company.

In order to prove this alleged sale by Campbell to the Campbell Barrel Machine Company, the defendant offered the book of minutes of said Campbell Barrel Machine Company, showing the proceedings held at a special meeting of the shareholders on January 9, 1892, at which his proposition to make said sale to said company was presented and accepted.

The plaintiff objected to the admission of said minutes, but the court overruled his objection and allowed the minutes to be read in evidence.

This testimony was inadmissible, first, because the original proposition of said Henry Campbell to the Campbell Barrel Machine Company was not produced, nor its absence sufficiently accounted for, the minutes offered in evidence containing nothing but an alleged copy of his said proposition; secondly, because even if such secondary evidence of his proposition was admissible because of the failure after proper search to find the original, the alleged sale itself was not admissible to impeach the title of the

plaintiff as a subsequent *bona fide* purchaser from said Campbell for value without notice.

1st. No sufficient foundation for the secondary evidence was laid. In view of the important character of the original, alleged to have been lost, a more thorough search for it should have been shown to have been made. The authorities are clear and full on this point.

2d. The alleged sale to the Campbell Barrel Machine Company was not recorded in the Patent Office. The assignment from him to said company, which was recorded, did not *profess* to cover any improvements which he might thereafter make to the said machine or in the principle or process claimed by him, nor did the defendant propose to follow the testimony up by evidence of actual notice to the plaintiff of said alleged assignment by Campbell to the Campbell Barrel Machine Company.

There could be no conflict of equities. There was no sale of any future improvements, nor could there be. The proposal was merely that the Campbell Barrel Machine Company should be entitled to such improvements, if they should be made.

This was simply an executory contract, and gave no title to the invention in dispute, as if sold to that company. Whatever rights the Campbell Barrel Machine Company may have had against Campbell is a question of contract merely, and not one under the inherent meaning and effect of the patent laws.

Regan Vapor E. Co. *vs.* Pacific Gas Engine Co., 49 Fed. Rep., 68, or 7 U. S. App'ls, 73.

This ruling of the court, it is respectfully submitted, was altogether erroneous, and inasmuch as the evidence which the court admitted tended to sustain the second and third

supplemental pleas on equitable grounds of the defendant, and to show that the *defendant* did not acquire from the plaintiff a valid title to the machine and to the letters patent therefor, because the plaintiff himself had not acquired a valid title from said Henry Campbell, the ruling was manifestly most prejudicial to the plaintiff and calls for a reversal of the judgment.

The title of Harrison does not depend upon any decisions or principle applying to covenants relating to real estate and equities growing out of them, but is to be determined exclusively under the terms of the patent laws. Whatever rights the Campbell Barrel Machine Company may have against Henry Campbell must be determined by the terms of the contract between them, but cannot be considered in this case.

The plaintiff's objection to this testimony was and is that inasmuch as there was no record in the Patent Office of this agreement of January, 1892, between Campbell and the Campbell Barrel Machine Company, whereby, as was claimed, he covenanted to assign not only the invention then made, but all that he might thereafter make relating to the same subject-matter and involving the same principle, the plaintiff's title under the subsequent assignments to him from Campbell was superior to that of said Campbell Barrel Machine Company, the plaintiff not being shown to have had any knowledge or notice of said alleged agreement of January, 1892, between Campbell and the Campbell Barrel Machine Company. In support of this contention we refer to—

Wright *vs.* Randle, 8 Fed. Rep., 599.

Harrison had no notice, actual or constructive. The burden of proving such notice is on the defendant, and not a particle of evidence was offered by him to sustain said contention. There must be proof to bar a *bona fide* purchaser.

Could the Campbell Barrel Machine Company have filed a bill for specific performance of the alleged agreement by Campbell, and by injunction have restrained him and Harrison from assigning the letters patent to Morton? Clearly not. Harrison must have had notice of the previous agreement, if any, and the burden of proof was on the defendant.

N. Y. P. Bag Co. *vs.* Union B. P. Co., 32 Fed. Rep., 787, 788.

There can be no implication of notice from the record, if any, in the Patent Office. It would have been unauthorized and therefore not important. (*Ibid*, 788.)

Of course, the title of an equitable purchaser must be protected when it can be, consistent with the rights of others.

Whitney *vs.* Purr, 115 Illinois, 293.

Such an argeement would only be good against those who purchase with notice.

Con. Windmill Co. *vs.* Empire W. Co., 8 Blatchford, 298.

Consol. Elec. Co. *vs.* Edison Co., 25 Fed. Rep., 720.

By operation of law, the legal title to the patent, upon the issuance thereof, *eo instanti* vested in the ultimate assignee.

Consolidated Electric Light Co. *vs.* Light Co., 34 Fed. Rep., 335.

Pontiac Knit Boot Co. *vs.* Merino Shoe Co., 31 Fed. Rep., 286.

As between the right of a person holding a contract for such an interest and the right of a *bona fide* holder or purchaser for a valuable consideration and *without notice*, the latter must prevail. The defendant must deny that the plaintiff is a *bona fide* purchaser, and must assume the burden of impeaching the legal title.

Gibson *vs.* Cook, 2 Blatchford, 144.

The inventor has an inchoate right to the exclusive use of his invention—it being complete—and he could assign it, so that the legal right which would result from the issue of the patent would vest in his assignee.

Gayler *vs.* Wilder, 10 Howard, 477.

Where the conveyance precedes the granting of the patent, and the assignment is first recorded, the patent may be issued to the assignee.

Rev. Stat. U. S., §§ 4895–'6.

The plaintiff here claims title through two assignments from Campbell, each being for one-half interest in a certain application filed in the Patent Office of the United States, at Washington, D. C., which application is for letters patent covering the invention of a machine for forming and making barrels and kegs.

It is respectfully suggested that the court below fell into rror in supposing that, because these assignments did not contain a request that the letters patent should issue to the assignee, that when the letters were issued in the name of the inventor he only took an equitable and not a legal title to the patent rights in the invention, and to justify this conclusion the court of appeals of Maryland relied upon a statement in Robinson on Patents, sections 411–414, that "the assignment of a right to obtain letters patent is in effect a contract to assign the patent when issued, and as such is enforceable in equity." But "such an instrument creates no legal title to the patent."

The broad statement made by Robinson, and thus acted upon by the court of appeals, is not borne out by the authorities cited by him or by the said court of appeals.

It is a familiar principle that an invention already accomplished is a proper subject of a common-law conveyance—*i. e.*, of one transferring a *legal* interest therein. In Regan

Vapor Co. *vs.* Pacific Gas Co., 7 U. S. Apps., 73, the court draws a distinction in this respect betwixt inventions already accomplished and inventions merely contemplated, holding that in the latter case a conveyance can carry only an *equitable* interest. In the present case the invention was one already accomplished and the conveyance thereof valid at common law upon assignment.

Therefore, if no United States statute has expressly or impliedly added to the requirements, in point of form or otherwise, which the common law makes for a transfer by one citizen to another of a legal interest in an invention already accomplished, an employment of a common-law form is sufficient.

Such is the present case: One Campbell, an inventor, transferred, for a valuable consideration and by a conveyance valid at common law, the invention in question to the plaintiff Harrison.

But it is said that such conveyance contained no clause of request to the Commissioner of Patents, etc., to issue to *Harrison* letters patent for such invention, and therefore that the latter acquired only an *equitable* title, and in consequence is postponed in point of right to a previous assignment by Campbell by *executory* contract.

We submit that there is no suggestion in the patent statutes to the effect that conveyances of inventions are subject for their effect in point of law to such a clause, and no power (even *ambiguously* expressed) conferred by any statute upon the Commissioner of Patents, etc., to impose one or other qualification of right of private property as a penalty for the omission of such a clause. Any such pretended imposition by that office is therefore *pravus consuetudo*.

All that is material on this point, which is required of buyers and sellers by the statutes, is (R. S., sec. 4898): "Every patent or any interest therein shall be assignable in law by an instrument in writing," such assignment to be void as against any subsequent purchaser for value unless

recorded in the Patent Office within three months from its date.

And the duty of the Patent Office upon this point to such assignees is likewise thus simply defined (R. S., sec. 4895): "Patents may be granted and issued or reissued to the assignee, inventor, or discoverer, but the assignment must first be entered of record in the Patent Office; and in all," etc. [unimportant here].

The word "may," in the section last quoted, is of course imperative—*i. e.*, is to be read "must." In addition to the usual familiar arguments for this interpretation in cases where "may" defines statutory duties of public officers in regard to rights of private citizens having dealings with these, we notice that the word "may" is the one employed in Revised Statutes, section 4886, to define the right which any inventor, etc., has to obtain letters patent in any case.

The word "assignment," in section 4895, is (except so far as affected by some statutory context thereupon) a common-law term, and so also is the word "record." The legislature has chosen to employ the former to define *the proper method of transferring title*, and the latter to define that of *notice* thereof to the public and to the department. It seems impossible to conceive that it is competent for any other department of the Government to add to these definitions, or, to come more closely to the features here, could enforce a regulation the scope of which is its own official convenience, by providing that non-compliance therewith shall seriously impair title to property otherwise properly conveyed according to law.

In submitting these observations we have not been inadvertent to the long train of decisions which has been made upon the validity of *constructions by public officers* upon statutes which departments are called upon to execute. A late case involving these is *U. S. vs. Tanner*, 147 U. S., 661; and lists of the more important decisions upon the same matter

are given in *U. S. vs. Union Pac. R. R. Co.*, 37 F. R., 551, and *Rand vs. U. S.*, 38 *ibid.*, 665.

In some of these cases the courts have deferred to the departmental decisions, and in others have overruled them. In all, however, they have required that the statute under construction should have been *ambiguous* or *obscure*. Generally, in cases where the court has concurred with the department merely for the reason that there has been a long train of decisions in the latter to the same effect, this has been done in that class of such cases where the train of departmental or other official decisions has been in *contradiction* of a claim of the Government in whose service the department, &c., was—that is, a train of decisions *quasi by the Government against itself*. Such, for instance, was that of the very first case in the list, that of *Edwards vs. Darby*, 12 Wheat., 206, where the point in dispute was the effect of a questionable survey made by the land office of a State to divest the State of title.

We submit, as above, that the statutes in question are not ambiguous as to the form of conveyance requisite to pass title between man and man as to the requisites of a due notice of such transfer to the department.

7th Exception (R., pp. 173 to 175).

This exception brings up the court's rulings on prayers.

PLAINTIFF'S FIRST PRAYER.

This prayer should have been granted as offered.

The prayer as offered asked the court to rule "that there is no evidence that the plaintiff had any knowledge or notice of said agreement between said Campbell and said Campbell Barrel Machine Company." In rejecting the prayer as offered, but granting it with a modification omitting these words, the court, it is respectfully submitted, plainly erred.

No evidence was offered tending to show that the plaintiff had actual notice or knowledge of the alleged agreement of January, 1892, between Campbell and the Campbell Barrel Machine Company, and for the reasons and upon the authorities already cited in the statement of the sixth exception, the plaintiff cannot properly be charged with constructive notice.

This ruling of the court was a material and vital error.

PLAINTIFF'S SECOND PRAYER.

Plaintiff's second prayer asking the court to rule that the defendant had offered no evidence legally sufficient to show that the contract set out in the declaration was procured by fraud or undue influence having been conceded, there is no occasion to do more than to call the court's special attention to this concession and to its importance throughout the whole discussion.

PLAINTIFF'S THIRD PRAYER.

This prayer asked the court to rule "that the defendant has offered no evidence legally sufficient to show that there was no consideration for the agreement set out in the declaration." The agreement, being under seal, necessarily imported a consideration, which, upon the issue joined on the defendant's first supplemental plea, on equitable grounds, it was incumbent upon the defendant to disprove, there being confessedly no evidence of fraud or undue influence in procuring the execution of the agreement. The plaintiff, so far as the present defense is concerned, was entitled to recover, unless the defendant supported by competent evidence the issue raised by him, that there was no consideration. If our contention in regard to the validity of the plaintiff's title be correct, as we have endeavored to show hat it is, the assignment of the machine and of the letters

patent therefor were a sufficient legal consideration, and accordingly the court erred in rejecting this third prayer of the plaintiff.

PLAINTIFF'S FOURTH PRAYER.

The court erred in rejecting the plaintiff's fourth prayer and in granting in lieu thereof the instruction prepared by the court as a substitute for it. The plaintiff was entitled to a distinct instruction that there was no evidence legally sufficient to show that he had any knowledge or notice of the alleged agreement of January, 1892, between Henry Campbell, his assignor, and the Campbell Barrel Machine Company, and the court erred in rejecting the plaintiff's fourth prayer, which contained this statement, and in substituting for it the court's own instruction, which left it to be found as a matter of fact whether the plaintiff had any knowledge or notice of said agreement of January, 1892, between Campbell and the Campbell Barrel Machine Company, when he made the agreement sued on. There being no evidence that he had any such knowledge or notice, it was clearly erroneous to submit that question to be passed upon by the court sitting as a jury.

This is the material difference between the plaintiff's fourth prayer and the court's instruction granted as a substitute for it, and for this error the plaintiff asks a reversal.

The plaintiff's prayer asserts the validity of Morton's title under the assignments from Campbell and Harrison, as the plaintiff had no notice of any prior title in the Campbell Barrel Machine Company, and there was no evidence thereof, but the court's substitute only says there was no evidence to show that the Campbell Barrel Machine Company *claimed* any interest in the patent.

But the minutes offered in evidence were for the purpose of making a claim on the part of the Campbell Barrel Machine Company. It was for the very object of establishing a claim to these improvements that the evidence was admitted.

DEFENDANT'S FIRST AND SECOND PRAYERS.

These two prayers should be discussed together. They are inconsistent with each other, the question of delivery *vel non*, submitted in the first, being inconsistent with the special facts hypothetically put in the second prayer.

A special exception to the second prayer was filed because of the total failure of legally sufficient evidence to sustain the hypotheses of fact which it contains. The plaintiff will maintain that there is in the record no evidence sufficient to prove the several matters set out in this second prayer, and that for this reason it should not have been granted.

The conduct of the defendant after the execution of the agreement sued on—his recognition of the contract as an existing outstanding agreement between him and the plaintiff—his employment of an attorney to procure the patent rights in this country and from foreign governments—his payment of the fees necessary for such purpose—his recognition of the assignment of the patent right made to him by the plaintiff—his assertion of ownership of the patent and of the patented article—his declarations to the plaintiff's witnesses that he had made the contract, and his whole conduct after its execution, absolutely repel the theory attempted to be set up in this second prayer.

With the abandonment of the distinct allegation that the execution of the agreement had been procured by fraud and undue influence, this new ground of defense absolutely fails.

Full knowledge of the contents of an instrument deliberately signed and sealed will be imputed to a party whose mental capacity is not disputed, and when, as here, after alleging that he was induced to sign it by fraud and undue influence, he abandons such defense, he cannot be permitted

to set up a defense not only inconsistent with such allegations, but not raised upon the pleadings.

There is no issue in this case of any such understanding between the plaintiff and defendant as is set out in the defendant's second prayer, and all the testimony referred to in the alleged support of it is necessarily irrelevant, incompetent, and insufficient.

The plaintiff's exception to the second prayer of the defendant should have been sustained and the prayer itself should have been rejected, and a reversal is also asked by reason of this error.

It is true that the burden was on the plaintiff to prove delivery. But how can delivery be proved?

"Delivery, as well as approval, may depend on circumstances, such as the place where the bond is found, the *indorsements upon it*, and inferences fairly deducible from the *facts of the transaction*."

Burgess *vs.* Lloyd, 7 Md., 201.
Brown, &c., *vs.* Murdoch, 16 Md., 533.

The contract on its face is dated, signed, sealed, and witnessed.

All the witnesses for the plaintiff prove the delivery and acceptance.

It is dated December 8, 1894, and witnessed same day by Carey Cole, and on 22d of December, 1894, witnessed by Campbell. Indorsed on the back of it is a payment.

The defendant admitted he accepted the assignments under a "trust," but with no declaration thereof, and holds now these patents, and under that admission the prayer of the defendant was granted. It required the finding that the sealed instrument was never delivered, in the teeth of his own admission that it was delivered, but that he held the contract and assignment of patent under a trust.

The repugnant theories of the first and second prayers are irreconcilable.

That "the papers were to be signed by the parties in duplicate and both kept in the defendant's possession, and should not be of any force, and should belong to the defendant until he chose to put it in force," is so inconsistent with the theory of the first prayer as to destroy all confidence in either of them.

The testimony of the defendant himself on this point is worthy of the attention of the court:

"The language was that if I signed them they would be of no force; that they would be held by me as long as I chose.

"They were of no value and no force, and only put in use as I chose—whenever I chose.

"Yes, sir; he said I should keep them both; *both said they regarded them as mine.*

"Q. Have both copies—both duplicates, if you will call them so—been in your possession from that time down to the day that we produced them here, the day that the case began before his honor Judge Dobler?

"A Yes, sir; *they were all right in my possession, right in my office.*" (R., p. 107.)

A comparison of this statement with that made under oath will show the reliability of the defendant, upon whose testimony as to delivery of the contract the court below acted. (R., p. 15.)

But the pretense that the contract had not been accepted in its full force is positively negatived by the testimony of the defendant's book-keeper and witness.

Speaking of an interview between the plaintiff and defendant in *January*, 1895, the latter said to the former: "I want you to come up and go to the Mercantile Trust Company with me and my clerk and let him *destroy or cancel* the signatures on this contract."

"Mr. Morton wanted Mr. Harrison to go to the Mercantile Trust Company with me, and for me to cancel the signatures.

"He said, 'Let my clerk cancel the signatures.'"
(R., pp. 157, 158.)

Why should the signatures be cancelled if the contract had never been delivered, or if it had been delivered only to be put in force when the defendant chose?

Does it not refute both theories of the defendant? Such testimony was not legally sufficient to justify the granting of such a prayer. The contract was not delivered on condition. When a condition is set up it must be clear and definite. All the cases show this.

Ware *vs.* Allen, 128 U. S., 596.

Pyne *vs.* Campbell, 6 Ellis and B., 370.

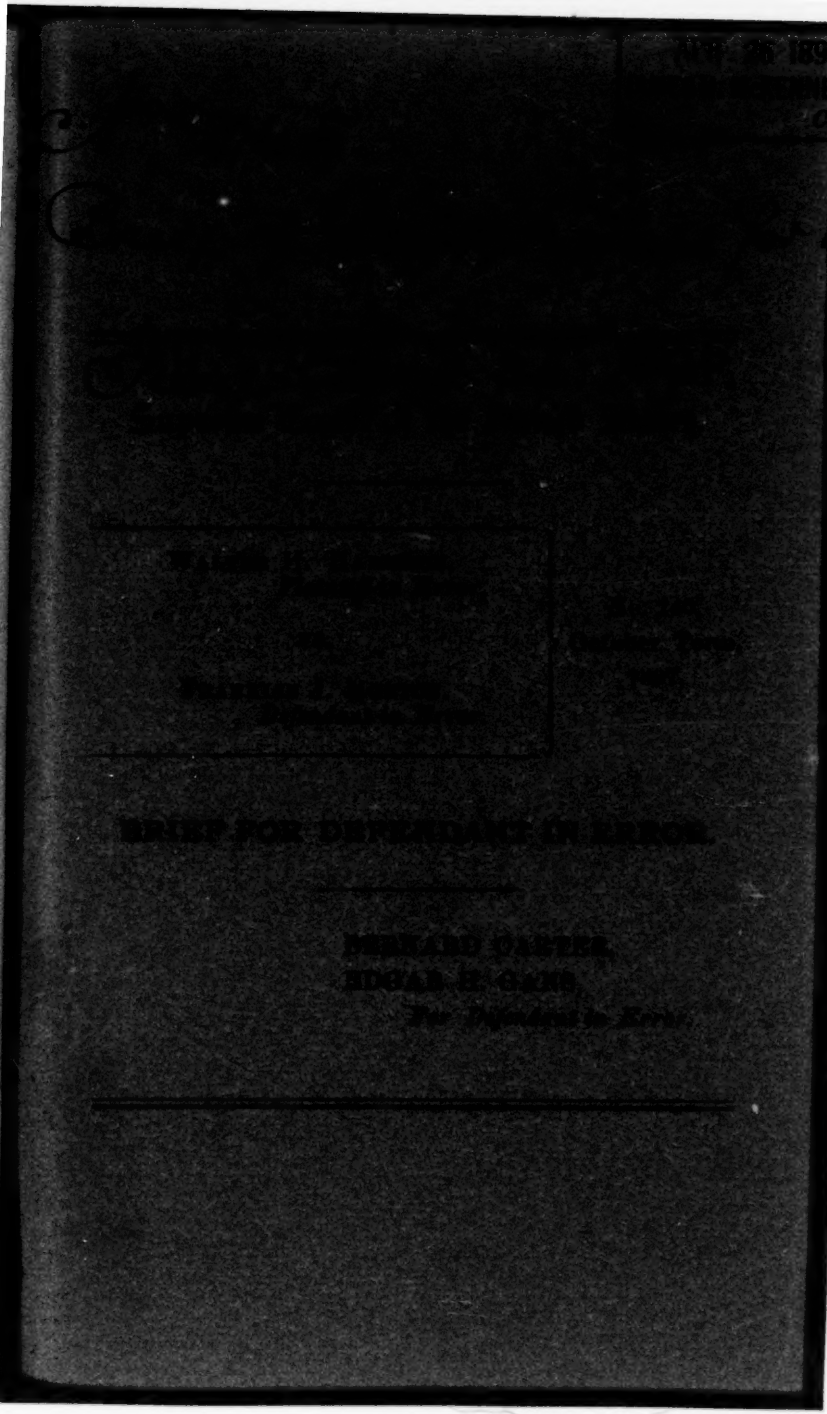
But if the latter theory was true, the defendant did exercise his option. The contract was signed December 8, 1894. He immediately went to Watson, the patent attorney, gave him power of attorney to take charge of the matter in the Patent Office—power of attorney to get foreign patents. He paid Graham & Lowe, patent attorneys, fees earned by them in filing applications, &c., for Campbell and Harrison. He made application in his own name for the British patents *December* 10, 1894, he took from Harrison the assignment of the patent and the right to the monopoly. He paid for all these things, between December 8 and December 31, the sum of $2,714.80. All these acts in performance of his obligations under the contract he did in December, 1894. (R., p. 54.)

The defendant desired to employ the witness Noyes to take charge of the mechanical part of the business to be conducted under this patent. He told him "he (Morton) had purchased it from Mr. Harrison, and that it was his idea in meeting me, to see if I would go on and build them as I had built works for the Campbell Barrel Machine Company." (R., p. 64).

There is no issue in the case of any such alleged understanding between the plaintiff and the defendant as is set out in the second prayer, and all the testimony referred to

in alleged support of such theory is necessarily irrelevant, incompetent, and insufficient. Accordingly, the plaintiff's exception to this second prayer should have been sustained and the prayer itself rejected, and a reversal is also asked by reason of this error.

W. PINKNEY WHYTE,
S. F. PHILLIPS,
F. D. MCKENNEY,
For Plaintiff in Error.



Supreme Court of the United States.

WALTER H. HARRISON,
Plaintiff in Error,

vs.

FRANKLIN J. MORTON.
Defendant in Error.

No. 245,
October Term,
1897.

BRIEF FOR DEFENDANT IN ERROR.

A.

The plaintiff in error was the plaintiff below, and brought his suit in the Baltimore City Court to recover $300,000 for the breach of an alleged contract dated December 8, 1894.

By the terms of this alleged contract, the plaintiff in error was to assign to the defendant a certain invention for a machine to make barrels and kegs, for which application had been made in the Patent Office by the inventor, one Henry Campbell, and of which said invention the plaintiff in error declared himself to be the owner by assignment from Campbell. For the sale and conveyance to him of all rights under said patent, the defendant, by the terms of the alleged contract, was to pay the plaintiff in error $100,000 in cash, within ten days after the issuing of letters patent for the invention by the United States, to transfer and deliver to the plaintiff in error, in addition, 2,000 full-paid and non-assessable shares of stock of the par value of $100 per share, of the capital stock of a corporation to be incorporated and organized by the defendant, with a capital

stock of $500,000, and also to pay to the plaintiff in error a sum equal to forty per cent. of the gross royalties that shall be received by said corporation from the sales of said patented articles under any and all of said patents. (Record, pages 7, 16, 18.)

The defendant, in his defence, alleges:

(1.) That he never made any such contract, and that the attempt to enforce the paper of December 8, 1894, was a gross fraud upon him.

(2.) That the signature to the paper was procured by fraud and undue influence.

(3.) That, upon equitable grounds, there was failure of consideration, because the plaintiff in error, at the time of the alleged agreement, had no valid title to the invention which he purported to sell.

(4.) Set off.

These defences are all set forth in appropriate pleadings. (Record, pages 9-12.)

The case was tried on the first, third and fourth defences, as the defendant conceded that there was no evidence to sustain the second defence.

The case being tried before the Court without a jury, the Court found a general verdict for the defendant for $35,091.65, the amount of the defendant's set off, with interest. (Record, page 13.)

The plaintiff in error appealed to the Court of Appeals of Maryland, assigning as error, certain rulings of the Court below on the admissibility of evidence, and the action of the Court below in granting and rejecting certain prayers offered by the respective parties.

There were six exceptions taken to the admissibility of evidence, and are found in the Record, as follows:

Exception 1, Record, pages 101 2.
Exception 2, Record, page 104.

Exception 3, Record, page 114.
Exception 4, Record, page 122.
Exception 5, Record, page 126.
Exception 6, Record, page 163.

The seventh and last exception was taken to the action of the Court in granting and rejecting certain prayers. (See Record, page 176.

The Court of Appeals of Maryland affirmed the rulings of the Court below. (See Record, 177-183—Opinion).

The plaintiff in error thereupon sued out his writ of error to this Court and relies in his petition for the writ upon all the exceptions taken by him in the lower Court, except the third and the fifth. (See Petition for Error, Record, 1-4).

There can be no question but that the first six exceptions taken to the admissibility of evidence involve only matters of common or statute law in force in the State of Maryland. There is no Federal question involved in any one of those exceptions.

As to those exceptions, therefore, it is well settled that the decision of the Appellate Court of the State is conclusive, and the Supreme Court of the United States has no jurisdiction to review its determination.

Murdock vs. City of Memphis, 20 Wall. 590.
Hale vs. Akers, 132 U. S. 554.
Henderson vs. Bridge Co., 141 U. S. 679.
Rutland R. R. Co. vs. Central Vt. R. R. 159, U. S. 630,
Seneca Nation vs. Christy, 162 U. S. 289.
Dibble vs. Bellingham, 163 U. S. 69.

B.

The only Federal question in the case is to be found in the seventh exception, which was taken to the action

of the Court below in granting or refusing certain prayers.

To understand these prayers, the main Federal question raised thereby and the relation of this Federal question to the other fundamental issues in the case, it will be necessary to state the two main defences relied upon by the defendant in the pleas above mentioned, and briefly to state the evidence offered in their support.

The said two main defenses relied upon by the defendant in his pleas were:

1st. That the alleged agreement was not the act and deed of the defendant.

2d. That assuming it to be his contract, it was void upon equitable grounds because of failure of consideration in this, that the invention which the plaintiff in error contracted to sell to the defendant, did not belong to him.

We will treat them in order:

POINT ONE.

I.

Non Est Factum.

The evidence shows that the plaintiff in error first met the defendant, who had been doing business in Baltimore for a number of years, in 1885. That from that time until the date of the alleged contract sued on in this case, he had persuaded the defendant to become interested in a number of schemes, during which he borrowed large sums of money from the defendant on precarious or worthless securities, so that, at the time of this alleged contract, he was indebted to the defendant in a sum over $30,000. (Record, pages 82, 101.)

Shortly before the date of the alleged contract, to-wit: in November, 1894, the plaintiff in error approached the defendant with reference to selling him the invention for making barrels and kegs. He said that Henry Campbell had a patent, and they wanted the defendant to join them in developing it.

The defendant said to him: "I would not do anything at all, not at all, until I got the money he owed me. I would not go into any agreement or have anything to do with him until I got my money that was owing. * * * I told them I would not have anything to do with him until he paid me my money. * * * Then he asked me if I would take it in trust; he said there was a small amount of expense in getting out the patents. I said I would pay that. I would take it in trust and pay that." (Record, page 102.)

They also presented a paper they called a subscription list to him about this time, containing a proposed turning over of the patent to a company to be formed. The name they proposed was the "Franklin J. Morton Company," but he objected, and the name was changed to Eureka. (Record, 28, 105-6.)

The defendant emphatically refused to have anything to do with the formation of the new company until his money was paid. (Record, pages 105-6.)

They talked to him about the formation of a company, and he said in a general way, that he would assist in taking hold of it, but would do nothing until the money due him was settled. He would do nothing until the money was given him; then he would consider what he would do, and whether he would do anything. They wanted him to join them in developing the patent, but there was no discussion as to the value of the patent. (Record, pages 122-3.)

II.

Then, on December 8, 1894, the plaintiff in error came to the defendant's office with the alleged contract, upon which this suit is brought, written in duplicate, and asked defendant to sign them.

Defendant testifies as to what took place:

"I glanced at them, as nothing had been talked of that way, as we had talked of, and I would not sign them at all, and I very emphatically said so; and he commenced talking with me, and I would not be reasoned with at all. I told him that I wanted my money first that he owed me, and I would not do anything about this company until they had that settled. Then he talked with me, and said they were as he said; says, I, no; they are not at all as we said; I will not sign them; then he said, you sign them; *they will be of no force, and you can hold them; hold them both, and be in your possession and belong to you; that was the idea he conveyed to me; that they should be mine until I chose to put them in force.*" (Record, pages 106-7.)

The only other persons present at the time of the signing of this paper in duplicate were, Carey Coale a clerk of the defendant, and the plaintiff in error.

The defendant in error testified that his clerk, Carey Coale, had left the room before the above-mentioned conversation between him and the plaintiff in error took place; but after the said conversation the defendant in error called Coale back into the room in which the plaintiff in error still remained, and told Coale what the plaintiff in error had said, as above testified to by the defendant in error; and plaintiff in error said the same to Coale; defendant in error then told Coale he was going to sign the papers, and defendant in error further said that the language of the plaintiff in error was that if defendant in error signed them, they would be of no

force; that they would be held by defendant in error as long as he chose; that they were of no value, no force, and would only be put in use as defendant in error chose, and whenever he chose. (Record, 106-7.)

Carey Coale fully corroborates the defendant:

"Mr. Morton called me back and said he wanted to say that he was going to sign those papers that Mr. Harrison then presented, but that he was to hold them in trust, and they were not to be acted upon except at his pleasure—at Mr. Morton's pleasure. Mr. Harrison went over the same ground also, and explained, as Mr. Morton held both papers, they could not be acted upon until he wished, until Mr. Morton wished. I then witnessed the signatures and left the room." (Record, page 77.)

The plaintiff in error, though present all the time during the trial, did not go on the stand as a witness.

These duplicates were left in the defendant's possession and remained in his possession continuously until produced by him at the trial table, under notice from the plaintiff in error. (Record, 107.)

The plaintiff in error endeavored to show by witnesses that this contract was recognized afterwards as existing by the defendant, mainly by a receipt which appears on the back of the contract for $1,500. The Record shows, however, that this receipt was utterly false, and a scandalous fraud, and a deliberate scheme to falsely make it appear that the contract was in force. (Record, pages 107-9, 36-8, 40, 110-16.)

It also appears in the evidence that the invention, which the plaintiff in error alleges that he sold to the defendant on December 8, 1894, for $100,000 in cash, $200,000 in paid up stock and forty (40) per cent. gross royalties, he had purchased from Campbell, ONLY TWELVE DAYS BEFORE, FOR THIRTEEN HUNDRED DOLLARS. (Record, pages 32, 34-5.)

III.

This defence, that the paper never was delivered, and never was operative as a contract, is set forth in the defendant's first and second prayers, which are as follows: (Record, page 175.)

Defendant's First Prayer.

The defendant asks the Court to rule, as matter of law, that upon the pleadings of the case the burden is upon the plaintiff to prove the delivery of the sealed instrument sued upon, and if the Court, sitting as a jury, finds that the paper sued on never was delivered, the verdict must be for the defendant.

Defendant's Second Prayer.

If the Court, sitting as a jury, shall find that when the paper sued on was presented by the plaintiff to the defendant for the latter's signature, with the request that he would sign it, the defendant declined so to do, as the terms of such papers did not correspond with any agreement made or talked of between the plaintiff and defendant, and that thereupon it was agreed between them that the papers in duplicate should be signed by the defendant, and both kept in his possession, and should not be of any force, and should belong to the defendant until he should put them in force, and that in pursuance of this agreement they were then signed by the defendant and always afterwards kept in his possession until produced at the trial of this cause, on notice, and that at no time after the signing of said papers did the defendant ever exercise his option of putting into force, but on the contrary, subsequently thereto, exercised his option by declining to recognize them as in force, then the verdict shall be for the defendant.

IV.

These were the only prayers asked for by the defendant. The verdict was generally for the defendant, and, therefore, although it cannot with absolute certainty be said that the decision was for the defendant on the ground that the paper writing never became operative as a contract, all the probabilities are that the decision was rested upon this ground. The evidence for it is overwhelming. No other point was raised on the part of the defendant in his prayers.

The legal proposition contained in the prayers is unquestionable.

Ware vs. Allen, 128 U. S., 596.
Pym vs. Campbell, 6 E. & B., 374-5.
Gardhouse vs. Blackburn, L. R. 1 P. & D., 115.
Wadsworth vs. Warren, 12 Wall. 307.
Edelin vs. Saunders, 8 Md., 129.

C.

We have gone over this defence of *non est factum* fully, in order that the Court may see that in this case there was a complete defence submitted for decision which did not involve in any way a federal question, that the defence is sustainable both, in fact, and in law, and broad enough in itself to support the final judgment without reference to the federal question. This being the case, it is well settled that this Court will not consider the federal question in the case as to whether it was properly decided or not.

When in a suit from a State Court there is a federal question, but the case may have been disposed of on some other independent ground, and it does not appear on which of the two grounds the judgment was based, then, if the independent ground is a good and valid one, sufficient of itself to sustain the judgment, the Supreme Court will not take jurisdiction of the case. This Court

will not, in order to reach a federal question, resort to critical conjecture as to which of the two defenses the judgment of the Court below rested upon.

Klinger vs. Missouri, 13 Wall., 263.
Johnson vs. Risk, 137 U. S., 300.
Beaupre vs. Noyes, 138 U. S., 397.
Eustis vs. Bolles, 150 U. S., 361.
Wade vs. Lawler, 165 U. S., 627-8.

POINT TWO.

Failure of Consideration.

The second defense was founded upon equitable grounds, the substance of it being, that even assuming the papers of December 8, 1894, to have been in force as a contract, the plaintiff in error undertook to sell to the defendant an invention in which he had no possible title. In determining whether the plaintiff in error had a title to the invention it became necessary to put a construction upon the patent laws and rules of the Patent Office of the United States, and thus to decide a federal question. We do not think, in view of the argument presented under Point I, that this Court has jurisdiction to pass upon this federal question, as brought up by the present writ of error.

But assuming, for the sake of argument, that we are wrong in that proposition, we respectfully submit that there can be no doubt about the correctness of the decision of the Maryland Court upon the federal question.

I.

In order to ascertain precisely what federal question is involved, it will be necessary to give a brief history of the application for the patent.

It appears that one Henry Campbell had invented, at a time not fixed in the proof, a machine for forming and making barrels and kegs. To protect the invention, he filed an application for a patent in the United States Patent Office, on September 6, 1894. On September 11, 1894, Campbell assigned one-half interest in said invention and application to the plaintiff in error. (Record, page 46-7.)

On November 26, 1894, Campbell assigned the other one half interest to the plaintiff in error. (Record, 48.)

On December 8, 1894, the paper was signed which is alleged to be the contract in this case, by which the invention and application were contracted to be conveyed by the plaintiff in error to the defendant. The patent was subsequently issued in the name of Henry Campbell, the inventor. (Record, page 57.)

II.

The defendant, under its pleas upon equitable grounds of a want of consideration, claimed that the plaintiff in error had no title to the invention sought to be sold by said agreement, because Henry Campbell, from whom he purchased said invention, had sometime before said purchase by the plaintiff, assigned it away to a corporation known as the Campbell Barrel Company.

The agreement between said Henry Campbell and the said company for the sale and purchase of said invention will be found in the Record, pages 162, 163.

In the trial Court the plaintiff in error offered the following as his fifth prayer:

"That the agreement of January, 1892, between Henry Campbell and the Campbell Barrel Company, offered in evidence by the defendant, is no defence to this action, if the Court shall find that by the true con-

struction of said agreement, the invention and device described in the contract set out in the declaration, is not embraced within said agreement."

This instruction thus asked for, the Court *granted.* (Record, page 174.)

It necessarily follows, therefore, that if the Court founded its verdict for the defendant, at all upon the defence we are now considering, that is to say, upon the ground that the plaintiff in error had no title to the invention, the Court must have found that the invention agreed to be sold to the defendant in error by the agreement sued on in this case, is the same asthat covered by the agreement of January, 1892, between Campbell and the Barrel Company, and that said invention had been sold to the said Barrel Company, before the assignment from Campbell to the plaintiff in error.

For as there was no other ground claimed by the defendant in error in support of this particular defense, it follows that unless the Court found such prior sale of said invention to the Barrel Company, it could not have found at all for the defendant upon the particular ground of defense we are now considering.

From this finding there was no appeal by the plaintiff in error, and could be none, as the plaintiff had by his own prayer (the fifth, Rec. 174) submitted this matter to the finding of the Court, and it had found, as above stated.

III.

By the sale thus made to the Campbell Barrel Company it acquired an equitable title in the invention so agreed to be sold to the defendant in error by the agreement sued upon in this case.

Dalzell vs. Duever Co., 149 U. S., 320.
Nesmith vs. Calvert, 1 Wood & Min., 34.

Troy vs. Corning, 14 How., 209.
Davis vs. Davis, 22 Blatch, 221-2.
Wright vs. Randel, 19 Blatch., 495.
Littlefield vs. Perry, 21 Wall., 226.
Aspinwall Mfg. Co. vs. Gill, 32 Fed. Rep., 697.
Bonsack Mch. Co. vs. Hulse, 57 Fed. Rep., 519,
65 Fed. Rep., 869.

IV.

But the position of the plaintiff in error in the Trial Court was, and here is, that although the said prior assignment had been made to the Campbell Barrel Company, it in no way affected the validity of the title he acquired under the said assignment from Campbell, because he had no notice of the said prior assignment, either actual or constructive. (Plaintiff's 1st and 4th prayers, Rec. 173-4.)

To this the defendant rejoins, it is not necessary that the plaintiff in error should have notice of the prior assignment, as under the assignments from Campbell, he would acquire only an *equitable title*, and it makes no difference whether he had notice or not; that purchasing an equitable title, he acquires it subject to all antecedent equities; and of these antecedent equities he necessarily has constructive notice, from the very fact that he is purchasing an equity.

Chew vs. Barrett, 11 S. & R., 389.
Shiras vs. Craig, 7 Cranch, 34-38.
Phillips vs. Phillips, 4 De Gex. F. & J., 208-15.
Bassett vs. Nosworthy, 2 Wh. & Tud. Ldg. Cas. in Eq. (Ed. 1877), p. 67.

"But where the purchase is of a mere equity, which owes its existence to the Court of Chancery, and cannot be enforced without its aid, the maxim, *nemo plus juris*

in alium transferre potest quam ipse habet, applies with full force. In other words, the purchase of an equitable estate is regarded by a chancellor as the purchase of a legal estate is viewed at law; it being true in both instances that he who is first in point of time has the better right."

Basset vs. Nosworthy, notes, 2 Wh. & T. Ldg. Cases in Eq. (Ed. 1877), page 67.

"The purchase of an equitable estate is subject to existing equities."

C. J. Marshall—Shiras vs. Craig, 7 Cranch, 34–38.

"That a purchaser, for valuable consideration, takes the title free from every trust or equity of which he has no notice—is intended of the purchase of a title perfect on its face, for every purchaser of an *imperfect* title takes it with all its imperfections on its head. It is his own fault that he confides in a title which appears defective to his own eyes, and he does so at his own peril. Now, every equitable title is incomplete on its face It is in truth nothing more than a title to go into chancery to have the legal estate conveyed, and, therefore, every purchaser of a mere equity takes it subject to every clog that may lie on it, *whether he has had notice or not.* But the purchaser of a legal title takes it discharged of every trust or equity which does not appear on the face of the conveyance, and of which he has not had notice, either actual or contructive."

C. J. Gibson, in Chew vs. Barnett, 12 S. & R. 389.

"I take it to be a clear proposition that every conveyance of an equitable interest is an innocent conveyance; that is to say, the grant of a person entitled merely in equity passes only that which he is justly entitled to, and no more. * * The first grantee is entitled to be

paid first, and it is quite immaterial whether the subsequent incumbrancees, at the time when they took their securities and paid their money, *had notice of the first incumbrance or not.*"

Lord Westbury in Phillips vs. Phillips, 4 De Gex, F. & J. 208–215.

V.

But the plaintiff in error claims that he acquired the *legal title* to the invention under the assignments from Campbell.

This presents the only Federal question in the case.

Did the assignments from Campbell to Harrison convey the legal title to the invention and application, or only the equitable title? The Court of Appeals of Maryland decided that they conveyed only the equitable title, and hence the plaintiff in error claims that the Court erred in misconstruing the patent laws of the the United States against the plaintiff in error. (8th Assgt. of error, Record, page 4.)

For opinion of the Court of Appeals see Record 180 to 183.

A scrutiny of these assignments of the applications for patent, shows that neither of them *contains any request to the Commissioner of Patents* to issue the patents to the assignee. (Record, pages 46-48.)

This fact is commented on by the expert witness Watson, called by the *plaintiff in error.* The patent was issued in the name of Henry Campbell, and Watson explains this as follows:

"I ascertained that the probable reason why it had not been issued in the name of Mr. Morton was this: The original assignment from Mr. Campbell to Mr. Harrison did not contain the request which the rules of the patent office required that the patent should be

issued in the name of the assignee. * * * When Mr. Harrison brought me the first assignment of the half interest to him, which had been done by some other person, I noticed at once that this request to the commissioner to issue the patent in their joint names had been omitted, and I did not wish to call the attention of the patent office to the failure to insert that request; therefore, when I drew the assignment of the second half interest, which was the assignment of the whole interest, I purposely omitted that request." (Record, page 56.)

The authorities are uniform that a conveyance of an invention before the patent is issued will not convey a legal title unless there is in the conveyance a request to the Commissioner of Patents to issue the patent to the assignee, for without such request the Commissioner is bound, under the rules of the Patent Office, to issue the letters to the inventor.

"An assignment before patent, not requesting the issue to the assignee, is a *contract to assign* the patent after issue, and creates an *equitable title* in the assignee."

Robinson on Patents, sec. 769, 411-14, 764.

And the recording of such assignment is not even constructive notice.

Robinson on Pat., sec. 785.
Gaylor vs. Wilder, 10 How., 480, 493.
Hammond vs. Pratt, 16 O. G., 1235.
Ex Parte Chillingsworth, 80 O. G., 1892.
Ex Parte Lorentz, 59 O. G., 158.
Ex Parte Nichols, 80 O. G., 1891.
Wright vs. Randel, 8 Fed. Rep., 596, 598–9.
U. S. Stamping Co. vs. Jewett, 7 Fed. Rep., 877.
Pontiac Knit Boot Co., vs. Merino Shoe Co., 31 Fed. Rep., 286.
Gay vs. Cornell, 1 Blatch, 506.

There is no case which decides that under a conveyance of this kind the legal title to the invention passes. The authorities quoted by the plaintiff in error, below, all go to an entirely different proposition.

They merely decide that one who has a *legal title* to a patent or invention is entitled to be protected against a prior assignment, of which he had no actual or constructive notice.

See—Wright vs. Randel, 8 Fed. Rep., 599.
N. Y. P. Bag Co. vs. Union P. Bag Co., 32 F. R., 787.
Consol. Elec. Co. vs. Edison Co., 25 Fed. R., 720.
Gibson vs. Cook, 2 Blatch, 144.

VI.

As it follows from the aforegoing, that it is altogether immaterial whether the plaintiff in error had, or had not, actual notice or knowledge of the agreement of sale made between Campbell and the Barrel Company, the Court committed no error in its modification of the first prayer of the plaintiff in error (Record, 173), or in the rejection of his third and fourth prayers (Record, 174), or in the giving of the Court's own instruction. (Record, 176.)

We, therefore, respectfully submit that if we are right upon the FIRST POINT above discussed, the writ or error must be dismissed; and if we are not right in our contentions under our First Point, and are right in our contentions under our SECOND POINT, then the judgment of the Court must be affirmed.

BERNARD CARTER,
EDGAR H. GANS,
For Defendant in Error.

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BERNARD CARTER,
EDGAR H. GANS,
For Defendant in Error.

HARRISON *v.* MORTON.

ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

No. 245. Argued May 2, 3, 1898. — Decided May 23, 1898.

Eustis v. *Bolles*, 150 U. S. 361, affirmed to the points:

(1) That to give this court jurisdiction of a writ of error to a state court it must appear affirmatively not only that a Federal question was presented for decision by the state court, but that its decision was necessary to the determination of the cause, and that it

Statement of the Case.

was actually decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it;

(2) That where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question not Federal has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment.

THIS suit was brought by the plaintiff in error Harrison against the defendant in error on the 8th of February, 1895, in the Baltimore City Court to recover the sum of $300,000 damages for the breach of a contract under seal for the sale of certain patent rights.

Under the alleged contract the plaintiff in error sold, and the defendant in error bought and agreed to pay for, a certain machine, method and device for making barrels and kegs, and all his right, title and interest in certain pending letters patent therefor, when issued, at and for the price of three hundred thousand dollars, whereof one hundred thousand dollars were to be paid in cash within ten days after the issuing of letters patent, and the remaining two hundred thousand dollars were to be paid in the full-paid, non-assessable shares of a corporation, to be incorporated and organized by the defendant in error Morton under the laws of Maryland, with a capital stock of five hundred thousand dollars.

The pleas were:

First. *Non est factum.*

Second. That the signature of the defendant in error to the alleged agreement was procured by the fraud of the plaintiff in error.

Third. That the signature of the defendant in error was procured by the undue influence of the plaintiff in error.

And also three supplemental pleas on equitable grounds:

1st. That there was no consideration for the alleged agreement.

2d. That at the date of the alleged agreement Harrison

was not the owner of and had no valid title to the machine, method and device mentioned in the declaration.

3d. That at the time of the alleged assignment of the patent Harrison was not the owner of and had not a valid title to the said patent.

The defendant also filed a plea of set-off, and upon demand for a bill of particulars of such set-off filed a bill of particulars, amounting to thirty-one thousand seven hundred and ninety-one dollars and fifty-two cents ($31,791.52).

Replications were duly filed and issues joined on all of them.

The case was tried before the judge without a jury.

At the trial the parties asked the court to rule on certain propositions contained in what the record calls "prayers." They were as follows, with the action of the court expressed thereon:

"Plaintiff's First Prayer.

"The plaintiff, by his counsel, prays the court to rule that if it shall find from the evidence that the contract between the plaintiff and defendant, dated December 8, 1894, and read in evidence, was signed and sealed by the plaintiff and defendant, and left in the possession of the defendant as a complete and operative instrument according to its terms, and that in accordance with said contract, shortly after the execution thereof, the plaintiff executed to the defendant the assignment read in evidence of his right to the invention therein mentioned, on which application for a patent was then pending, and that defendant afterwards employed and paid patent attorneys to procure for him the patent from the Government of the United States and from the governments of other countries; and if the court shall further find that the said application for a patent was allowed by the Government of the United States, and subsequently that letters patent for said invention were granted, bearing date January 22, 1895, as read in evidence, and that the plaintiff, at the time of the execution of said agreement with the *plaintiff*, had no knowledge or notice of the agreement between Henry Campbell and the Campbell Barrel Company offered in evidence, then the plaintiff is entitled to recover.

Statement of the Case.

"('*And that there is no evidence that the plaintiff had any knowledge or notice of said agreement between said Campbell and said Campbell Barrel Company.*') (Rejected as offered, but granted as modified by omitting the words in Italics.)

"*Plaintiff's Second Prayer.*

"The plaintiff, by his counsel, prays the court to rule that the defendant has offered no evidence legally sufficient to show that the contract set out in the declaration was procured by the plaintiff from the defendant by fraud, or by undue influence. (Conceded.)

"*Plaintiff's Third Prayer.*

"The plaintiff, by his counsel, prays the court to rule that the defendant has offered no evidence legally sufficient to show that there was no consideration for the agreement set out in the declaration. (Rejected.)

"*Plaintiff's Fourth Prayer.*

"The plaintiff prays the court to rule that if the court shall find that on the 11th day of September, 1894, Henry Campbell made to the plaintiff the assignment of one half interest in his then pending application to the United States Patent Office for a patent for the invention in said assignment mentioned, and subsequently, on or about the 26th of November, 1894, made to the plaintiff a further assignment of all his interest in his said pending application and to the patent thereon, whenever the same should thereafter be granted; then, by virtue of said two assignments, the plaintiff acquired an inchoate title to said invention and to the patent thereon, when the same should thereafter be granted, which title it was competent for the plaintiff to sell, assign and dispose of; and if the court shall further find that on or about the 10th day of December, 1894, the plaintiff executed to the defendant the assignment read in the evidence and dated the 8th day of December, 1894, for the consideration therein mentioned, and that subsequently, on or about the 22d day of January, 1895, a patent was issued by the United States in the name of said Henry Campbell, for the invention described

in said several assignments from said Campbell to the plaintiff and from the plaintiff to the defendant, then the defendant, by virtue of said letters patent, acquired a valid title to and became the owner of said patent, and said assignment from the plaintiff to the defendant, bearing date the 8th day of December, 1894, was supported by a good and sufficient consideration, and the plaintiff is entitled to recover upon the contracts set out in the declaration, provided the court, sitting as a jury, shall find that the said contract was signed and sealed by the plaintiff to the defendant, and was designed by them to be an operative instrument according to its terms; and provided further that at the time of the execution of said contract, the plaintiff had no knowledge or notice of the agreement between Henry Campbell and the Campbell Barrel Company, bearing date the — day of January, 1892, and offered in evidence by the defendant, and that there is no evidence legally sufficient to show that the plaintiff had any such knowledge or notice of said agreement. (Rejected.)

"*Fifth Prayer.*

"That the agreement of January, 1892, between Henry Campbell and the Campbell Barrel Company, offered in evidence by the defendant, is no defence to this action, if the court shall find that by the true construction of said agreement the invention and device described in the contract set out in the declaration is not embraced within said agreement. (Granted.)"

And the defendant offered the following two prayers:

"*Defendant's First Prayer.*

"The defendant asks the court to rule as matter of law that upon the pleadings of the case the burden is upon the plaintiff to prove the delivery of the sealed instrument sued on, and if the court, sitting as a jury, finds that the paper sued on never was delivered, the verdict must be for the defendant. (Granted.)

"*Defendant's Second Prayer.*

"If the court, sitting as a jury, shall find that when the paper sued on was presented by the plaintiff to the defendant

for the latter's signature, with the request that he would sign it, the defendant declined so to do, as the terms of such papers did not correspond with any agreement made or talked of between the plaintiff and defendant, and that thereupon it was agreed between them that the papers in duplicate should be signed by the defendant, and both kept in his possession, and should not be of any force, and should belong to the defendant until he chose to put them in force, and that in pursuance of this agreement they were then signed by the defendant, and always afterwards kept in his possession until produced at the trial of this cause, on notice, and that at no time after the signing of said papers did the defendant ever exercise his option of putting into force, but on the contrary, subsequently thereto, exercised his option by declining to recognize them as in force, then the verdict shall be for the defendant. (Granted.)"

The trial judge rendered a general verdict for the defendant, on which judgment was entered for $35,091.65, with interest and costs.

An appeal having been taken to the Court of Appeals of Maryland by the plaintiff Harrison, the judgment of the court below was affirmed by the said Court of Appeals on the 17th of June, 1896, for $39,091.65, with interest from the 13th of December, 1884, until paid, and costs.

On September 21, 1896, a writ of error to review this judgment was issued to the Court of Appeals of Maryland.

There are nine assignments of error. They embrace rulings on testimony, on the prayers and the following:

"1. It was error to decide that under the laws of the United States the assignments from Henry Campbell to Walter H. Harrison, dated the 11th day of September, A.D. 1894, and the 26th day of November, 1894, respectively, purporting to convey to the said Harrison the 'entire right, title and interest in and to the application for patent — serial number, 522,266 — and the patent right contained therein and covered thereby,' operated to convey to the plaintiff Harrison merely the equitable title in and to said invention and the patent rights covered by said application.

"2. It was error to decide that the said assignments were

not drawn as the laws required, and hence did not convey the legal title to the invention in question."

The opinion of the Supreme Court of Maryland, 83 Maryland, 456, is quite long, necessarily so, as it passes upon all the points which were raised by plaintiffs. The parts of it which concern the case are as follows:

"We think there can be no doubt that the defendant's two prayers were properly granted. By the first the court declared as matter of law that upon the pleadings the burden was upon the plaintiff to prove the delivery of the sealed instrument sued on, and that if the court, sitting as a jury, should find that said paper never was delivered the verdict must be for the defendant. The second prayer recites the evidence more at length, but asserts the same proposition of law, which appears to be well settled in this State. *Edelen* v. *Saunders*, 8 Md. 129. We discover no inconsistency between the two prayers. The plaintiff specially excepted to the second on the ground that there was no evidence in the cause legally sufficient to prove the facts therein set forth. It is clear, however, that the testimony of the witnesses, Morton and Coale, support the facts set forth in the prayer, and we have already held it to be competent and admissible under the issue made by the plea of *non est factum*.

"We will now consider the prayers of the plaintiff. He offered five, the second having been conceded and the fifth granted.

"The controlling proposition in this part of the case is that contended for by the plaintiff in his first, third and fourth prayers, namely, that there is no legally sufficient evidence in the case to show that he had any knowledge or notice of the agreement between the inventor, Campbell, and the Campbell Barrel Company.

"The correctness of this contention of the plaintiff depends, first, upon the legal effect of the assignments from Campbell to the plaintiff, and, secondly, upon the effect of the contract of Campbell with the Campbell Barrel Company — that is to say, whether said Campbell thereby assigned to said company an equitable title to his invention prior in date to the title he

claims to have assigned to the defendant, which latter title the plaintiff claims to be an absolute legal title; and the defendant's contention, on the contrary, is that it is a mere equitable title, subsequent in date, and therefore inferior to the title of the Barrel Company. The plaintiff claims title through two assignments from Campbell, each being for one half interest in a certain application filed in the Patent Office of the United States, at Washington, D.C., which application is for letters patent covering the invention of a machine for forming and making barrels and kegs.

"It will be found upon an examination of these instruments that they do not contain a request to the Commissioner of Patents to issue letters patent to the plaintiff. Notwithstanding they were recorded in the Patent Office, letters patent were issued in the name of Henry Campbell, the inventor, and the defendant contends that the legal effect of such an assignment, in which the inventor fails to embody a request to the Commissioner of Patents to issue letters to the assignee, is to convey to such assignee only an equitable title. It is conceded that by one of the rules of the Patent Office the Commissioner will not and cannot issue the letters patent to an assignee, unless specially requested so to do by the terms of the assignment. One of the witnesses refers to this rule in his testimony. The patent having been issued to Campbell instead of to the defendant, the witness thus explains: 'I ascertained that the probable reason why it (the patent) had not been issued to Mr. Morton was this: The original assignment from Mr. Campbell to Mr. Harrison did not contain the request which the rules of the Patent Office required in order that the patent should be issued in the name of the assignee.' (Rule 26, Rules of Practice in U. S. Patent Office, page 9. Revised April 1, 1892.)"

After considering authorities, the opinion decides that—

"If, therefore, the Campbell Barrel Company acquired an equitable title to the patent, as it undoubtedly did, under its contract with the inventor, before the assignment of the equity to the defendant, the latter took subject to the equitable title in the said company, and the first, third and fourth prayers of

the plaintiff were properly refused, for they all asked the court to say that there was no legally sufficient evidence to show that the plaintiff had knowledge or notice of the agreement between the plaintiff and the barrel company; but, as we have seen, knowledge and notice will be imputed to him, as C. J. Gibson said in *Chew* v. *Barnett*, *supra*, 'whether he had notice or not,' holding as he did only an equitable title."

The opinion concludes as follows: "Finding no error in the rulings of the learned judge below, the judgment will be affirmed."

Mr. William Pinckney Whyte and *Mr. Frederic D. McKenney* for plaintiff in error. *Mr. Samuel F. Phillips* was on their brief.

Mr. Edgar H. Gans and *Mr. Bernard Carter* for defendant in error.

Mr. Justice McKenna, after stating the case, delivered the opinion of the court.

It is manifest that the pleadings of the parties presented for decision other questions besides Federal ones, and which could be, independent of the Federal ones, determinative of the controversy. Assuming, therefore, that a Federal question was involved, it does not appear but that the decision was given on the contention of the defendant that the agreement never became operative for want of delivery. This contention was clearly presented by defendant's prayers, and they contained the only rulings urged upon the court in that way, that is, in the nature of instructions. They were given and the verdict was generally for the defendant. It is therefore natural to presume that the verdict was rendered on account of them and on the ground urged by them. The ruling of the court granting them was sustained by the Supreme Court of the State. It affirmed the ruling as correct in law and as supported by competent testimony. The Supreme Court, it is true, passed on other grounds, passed on the one which it is

claimed involved a Federal question, and decided it adversely to plaintiff. But the rule in such cases has been repeatedly declared by this court. It is not necessary to review the decisions. That has been done by Mr. Justice Shiras in *Eustis* v. *Bolles*, 150 U. S. 361. It is sufficient to announce the rule pronounced in that case:

"It is settled law that, to give this court jurisdiction of a writ of error to a state court, it must appear affirmatively, not only that a Federal question was presented for decision by the state court, but that its decision was necessary to the determination of the cause, and that it was actually decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment as rendered could not have been given without deciding it. *Murdock* v. *Memphis*, 20 Wall. 590; *Cook County* v. *Calumet & Chicago Canal Co.*, 138 U. S. 635.

"It is likewise settled law that, where the record discloses that if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment." See also *Wade* v. *Lawder*, 165 U. S. 624.

The writ of error must therefore be dismissed.

Mr. Justice Gray did not hear the argument and took no part in the decision.